Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

October Term, 1993

RICHARD H. HUNGER, LLOYD L. BETCHER and LAWRENCE F. POSSEHL, on behalf of themselves and all others similarly situated,

Petitioners,

v.

AB, CD, EF, and GH, whose true and correct names are unknown, Plan Administrators, Fiduciaries, Named Fiduciaries, Committee Members and Trustees of the CLEVITE INDUSTRIES, INC. HOURLY RETIREMENT PLAN, THE PULLMAN COMPANY, and CLEVITE INDUSTRIES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHEN PLAN PARTICIPANTS HAVE NO INTERRUPTION IN EMPLOYMENT, JOB DUTIES OR PLACE OF EMPLOYMENT, MAY A PLAN SPONSOR, THROUGH A FINANCIAL TRANSACTION SUCH AS AN ASSET SALE, DENY PLAN PARTICIPANTS AN EARLY RETIREMENT SUBSIDY PROTECTED BY CONGRESS UNDER SECTION 204(g) OF THE RETIREMENT EQUITY ACT OF 1984 FROM BEING ELIMINATED BY PLAN AMENDMENT?

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl, on behalf of themselves and all others similarly situated, petition this Court for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit to review the judgment in Richard H. Hunger, et al. v. AB, et al., 12 F.3d 118 (8th Cir. 1993).

OPINIONS BELOW

The opinion of the Court of Appeals was reported at 12 F.3d 118, and is reprinted in the Appendix at p. A-1. The order denying a rehearing is not reported and is reprinted in the Appendix at p. A-10. The Opinion of the District Court has not been reported, and is reprinted in the Appendix at pp. A-11 through A-17.

JURISDICTION

The decision of the Eighth Circuit was filed on December 17, 1993 and the order denying the petition for rehearing was entered on January 21, 1994. The jurisdiction of this Court is evoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the provisions of ERISA § 204(g)(1) and (2); 29 U.S.C. § 1054(g) (1) and (2).

> (1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(c)(8) or 1441 of this title.
>
> (2) For purposes of paragraph (1), a plan amendment which has the effect of-

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfied (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

STATEMENT OF THE CASE

Petitioners Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl were all employees of the Clevite Industries, Inc. ("Clevite"), Engine Parts Division in Lake City, Minnesota and members of and represented by Local Lodge 650 of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO ("Local 650"). As union employees of Clevite, the employees were covered by the Clevite Industries, Inc. Hourly Retirement Plan (the "Plan"). The Plan provided for a normal retirement benefit payable at age 65. The Plan was a defined benefit plan. Qualified participants who retired before age 65 under the Plan were entitled to a normal retirement benefit reduced by .5% per month for each month before the participant's 65th birthday. The Plan, however, included an early retirement subsidy which had been bargained between Local 650 and Clevite. This subsidy enabled Plan

participants to retire before age 65 with a normal retirement benefit reduced by only .2% per month, under certain circumstances, basically providing that persons 55 or over with 10 or more years of service with the company would be eligible for the early retirement subsidy.

On February 17, 1987, JPI Merger, Inc., a subsidiary of JPI Industries, Inc. ("JPI"), purchased the assets of the Clevite Engine Parts Division. The purchase agreement between Clevite and JPI required JPI to provide substantially the same retirement benefits as those Clevite had provided. Specifically, paragraph 21(b)(ii)(B) of the purchase agreement states:

> Except with respect to the 401-k plan, transferred employees not described in the preceding paragraph [pertaining to salaried-transferred employees] who, as of the closing date, are participants in pension plan shall become participants in one or more retirement plans established by Buyer which provide retirement benefits substantially similar to benefits which such transferred employees were receiving as participants in the pension plan as of closing date.

Purchase agreement, Appendix at A-163. Paragraph 21(e) of the purchase agreement required Clevite to provide vesting credit for participant service with JPI. That paragraph states: "Seller shall provide transferred employees who are participants in the pension plans as of the closing date with credit for service with Buyer for purposes of vesting under the Pension Plans." Purchase agreement, Appendix at A-164. Paragraph 21(b) of the purchase agreement provided that "On the closing date Buyer will offer employment to or be responsible for severance of all of the employees of the Division (the "Transferred Employees")." Appendix at A-162.

JPI did not, however, purchase the assets of the Plan, which were retained by Clevite. JPI did not assume the Plan, rather JPI

started a new employee retirement plan. Muenkel Affidavit, ¶ 8, Appendix at A-288 and A-289.

The jobs of the employees of the Engine Parts Division did not change as a result of the asset purchase by JPI. The employees continued to perform the same jobs at the same location and operations were not interrupted. The bargaining unit remained the same, with essentially the same number and identity of employees. Muenkel Affidavit, ¶ 9, Appendix at A-289.

On February 14, 1987, the Clevite Industries Inc. Benefit Plan Committee formally amended the Plan. That amendment provided in pertinent part:

> 5. By adding the following new subparagraph 3.5(f) to the Plan immediately after subparagraph 3.5(e) thereof:
>
> (f) notwithstanding any other provisions of the Plan to the contrary, an Employee who is transferred to employment with J.P. Industries, Inc. . . . pursuant to the sale of the assets of the company's Engine Parts Division and who, at the time of transfer, had not completed ten Years of vesting Service or attained Normal Retirement Age shall receive credit for Vesting Service for each full year . . . in which he is employed by J.P.I., in accordance with the foregoing rules generally applicable to Vesting Service with an Employer. Such an individual's Termination of Vesting Service will be the date the individual terminates employment with J.P.I. Employment with J.P.I. will not be taken into account for purposes of determining Benefit Service or, except as provided above, for any other purposes under the Plan and thus, if an Employee described above completes ten Years of Vesting Service, the type and amount of benefit he will be entitled to shall be the type and amount of benefit

> he otherwise would have been entitled to at the time of transfer if he then had completed ten years of Vesting Service. A transferred Employee who had completed ten years of Vesting Service or attained Normal Retirement Age prior to the time of transfer shall be entitled to the same type and amount of benefit he was entitled to at the time of the transfer.

Third Amendment of Imperial Clevite Inc. Hourly Retirement Plan, Appendix pp. A-108 and A-109.

In July 1987, the Pullman Company ("Pullman") acquired the assets of the Plan as a result of purchasing the stock of Clevite. Pullman informed the Plan Participants by memorandum dated August 1988, that their benefits would be frozen and their accrued benefits would be fully vested. This memorandum was silent as to the Plan participant's rights to receive the early retirement subsidy. The Plan participants were not aware that these subsidies were in danger. Muenkel Affidavit at ¶ 10, Appendix p. A-289.

Pullman also sent the Plan participants individual statements, along with a document entitled "Supplemental Administrative Information Engine Parts Division Retirement Plans". The statements showed each participant's retirement benefit under various circumstances, but did not include the early retirement subsidy. Instead, the statements indicated that early retirees would have their benefit reduced by a full .5% per month for each month they were under age sixty-five. Muenkel Affidavit at ¶ 11, Appendix p. A-289.

Pullman has refused to pay the early retirement subsidy. Pullman asserts that the plan participants are ineligible to receive the unreduced early retirement benefit if they did not meet the age and service requirements before the Engine Parts Division asset sale to JPI. Muenkel Affidavit at ¶ 12, Appendix p. A-289.

The Plan participants have, through no fault of their own, been unlawfully deprived of benefits they bargained for. This denial of the subsidized early retirement benefits is a violation of ERISA § 204(g).

Petitioners filed suit in U.S. District Court for the District of Minnesota alleging a violation of § 204(g) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1054(g). The District Court had jurisdiction over this suit pursuant to 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States, specifically ERISA, 29 U.S.C. § 1001 et. seq. ERISA provides that District Courts of the United States have jurisdiction over suits to enforce its provisions. 29 U.S.C. § 1132(e)(1).

Petitioners and Respondents filed cross-motions for summary judgment. On June 30, 1992, the District Court granted Respondents' motion for summary judgment. The District Court ruled that ERISA § 204(g) did not protect Petitioners, holding that the Petitioners' continued employment in the same jobs, represented by the same union, in the same location, after the asset sale pursuant to an agreement guaranteeing substantially the same benefits to employees after the sale, did not constitute employment sufficient to allow Petitioners to qualify for the early retirement subsidy.

Petitioners appealed to the Eighth Circuit Court of Appeals. On December 17, 1993, the Eighth Circuit affirmed the District Court, agreeing that the uninterrupted employment of the Engine Parts Division Employees was not sufficient to retain Petitioners' rights to an early retirement subsidy. In so ruling, the Eighth Circuit distinguished the decision of the Third Circuit in Gillis v. Hoechst Celanese Corp, 4 F.3d 1137 (3rd Cir. 1993), because in that case the purchase agreement had required that all employees of the selling company be hired by the purchasing company and that benefits remain the same for those employees after the sale. The Eighth Circuit contended that no such provision was in the purchase agreement in this case. The purchase agreement in this

case, however, did provide that all employees of the Engine Parts Division were to be hired by JPI, that substantially similar benefits would be provided, and that Clevite would give vesting credit to the employees for their service at JPI. Accordingly, Petitioners petitioned for a rehearing in the Eighth Circuit since the Eighth Circuit had overlooked these essential facts. The petition for rehearing was denied on January 21, 1994.

REASONS FOR GRANTING WRIT

I. THERE IS A CONFLICT AMONG THE CIRCUITS ON THE APPLICABILITY OF ERISA § 204(g) TO EMPLOYEES WHO REMAIN IN THE SAME JOBS AFTER AN ASSET TRANSFER

While the Eighth Circuit was considering its decision in this case, the Third Circuit decided the case of Gillis v. Hoechst Celanese Corp., 4 F.3d 1137 (3rd Cir. 1993). The Gillis case is factually indistinguishable from this case. The Third Circuit's decision in Gillis states that in 1989, Hoechst Celanese sold its PVC division to the American Mirrex Corporation. The plaintiffs involved in the Gillis case all continued in their same jobs at their same location with their same duties after the asset sale. From their perspective, the only thing that changed was the name of the company on their paychecks. In this case Clevite sold its Engine Parts Division to JPI and the plaintiffs continued in their same positions at their same location with their same responsibilities after the sale. To them, as well, the only change was the name of the company that employed them. In fact, Clevite continued to issue the employees' paychecks for over a year after the sale.

At the time of the Hoechst Celanese sale to American Mirrex, Hoechst had a retirement plan which gave early retirement benefits to anyone able to meet the "Rule of 85", i.e., their age plus years of service had to total 85. Thus, persons age 55 with 30 years of service with Hoechst were eligible for early

retirement. All of the plaintiffs in the Gillis case were not yet able to meet the rule of 85, but with continued service in that position might be able to do so in the future. The Gillis plaintiffs contended that § 204(g) of ERISA prevented Hoechst from taking away from plaintiffs the eligibility to qualify for early retirement benefits under the Plan. Section 204(g) states, in pertinent part:

> (1) The accrued benefit of a participant under a Plan may not be decreased by an amendment of the Plan . . .
>
> (2) For purposes of (1), a plan amendment which has the effect of -
>
> > (A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations) . . . with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. . . .

29 U.S.C. § 1054(g) (emphasis added).

The issue for the Gillis court was whether, after the amendment to the Plan, the Gillis plaintiffs would have been able to meet the preamendment conditions for the early retirement subsidy. Defendants argued that since the plaintiffs now worked for American Mirrex, and not for Hoechst, they could no longer accrue the service necessary to reach the rule of 85 and qualify for early retirement benefits under the Plan. Plaintiffs contended, however, that § 204(g)(2) required Hoechst to give them the opportunity to meet the preamendment conditions for the subsidy,

after the amendment. The contentions of the plaintiffs and defendants in this case are exactly the same as the contentions in Gillis.

The Third Circuit in Gillis found that § 204(g) could plausibly be interpreted either the way plaintiffs or defendants in that case contended it should be interpreted. The Court found, therefore, that the statute was ambiguous and must be interpreted by the Court to determine which of the contentions best reflected the intention of Congress in enacting the Retirement Equity Act in 1984, which added subsection (2) to ERISA § 204 (g).

To determine the intent of Congress in adding this language to the statute, the Third Circuit examined the legislative history of § 204(g), and interpretations of parallel sections of the Internal Revenue Code by the IRS. The Third Circuit noted that one of the sponsors of the Retirement Equity Act explained the legislative intent in this way.

> "A plan is not to be considered . . . to have satisfied all of its liabilities to participants and beneficiaries until it has provided for the payment of contingent liabilities with respect to a participant who, after the date of termination of a plan, meets the requirements for a subsidized benefit. . . . *by sharing in additional plan assets which otherwise would revert to the employer, employees nearing early retirement at plan termination who later meet the plan's early retirement conditions receive an immediate benefit* . . . [of] increased retirement equity."

Gillis, 4 F.3d at 1145, Note 7 (quoting 130 Congressional Record H 8763 (Daily Ed August 9, 1984) (remarks of Representative Roukema, Ranking Minority member of House Subcommittee on Labor Management Relations) (emphasis added by Gillis court)).

The Third Circuit also noted that the IRS had ruled that an employer would not satisfy all its liabilities under Internal

Revenue Code § 411 (the parallel provision in the Internal Revenue Code to ERISA § 204) unless they had set aside funds to finance the early retirement subsidies of eligible persons who could qualify for the benefit after the termination of the plan. See Revenue Ruling 85-6, quoted at Gillis, 4 F.3d at 1145.

The Third Circuit thus concluded

> that if Hoechst had continued to employ plaintiffs after terminating its early retirement plan, plaintiffs would be able to qualify for early retirement benefits at a later date by meeting the plan's pretermination requirements. We conceive of no obvious reason why this same result should not obtain when the employees continue in their same job for a successor employer.

Gillis, 4 F.3d at 1145-1146. Defendants argued that since Plaintiffs no longer worked for Hoechst, they could no longer accrue the service necessary to qualify under the rule of 85. Defendants contended that the critical issue for determining whether employees could continue to accrue service to later qualify for the preamendment conditions of the subsidy, was whether they continued to work for the plan's sponsor. That is precisely the claim of defendants in this case as well.

The Gillis Defendants supported their argument by quoting the legislative history of § 301 of the Retirement Equity Act:

> The bill does not, however, prevent the reduction of a subsidy in the case of a participant who, at the time of separation from service (whether before or after the plan amendment), has not met the preamendment requirements.

Gillis, 4 F.3d at 1146 (quoting S. Rep. No. 575, 98th Cong., 2nd Sess, 28 (1984), reprinted in, 1984 U.S.C.C.A.N. 2547, 2574).

The Third Circuit then noted that "separation from service" was a term of art in ERISA which had been interpreted by the IRS. The IRS has stated,

> an employee will be considered separated from service . . . only upon the employee's death, retirement, resignation, or discharge and not when the employee continues in the same job for a different employer as a result of liquidation, merger, consolidation, etc., of the former employer.

Gillis, 4 F.3d 1146 (quoting Revenue Ruling 79-336).

The Third Circuit concluded that when Congress used the term "separation from service" in describing the circumstances which would eliminate employees' ability to meet the preamendment conditions of the early retirement subsidy after the amendment, they did so with the knowledge of the meaning given to that phrase in the context of ERISA and its parallel sections in the Internal Revenue Code. The Court concluded that continuing in the same job at the same location after the asset sale did not constitute a separation from service which would eliminate the ability of those employees to meet the preamendment conditions for the early retirement subsidy. Hoechst was required, therefore, to take the early retirement subsidy into account in determining the amount of funds to transfer to American Mirrex to cover the Hoechst liability under its plan.

The Eighth Circuit in this case was aware of the Gillis decision when it issued its decision. The Eighth Circuit expressly disagreed with the Third Circuit stating: "Because the plain language of § 204(g) applies only to a 'participant who satisfies ... the pre-amendment conditions for the subsidy,' we find it unnecessary to resort to the legislative history in order to decide the question presented under the facts of this case." Hunger v. A.B., 12 F.3d 118, 121 (8th Cir. 1993). The Eighth Circuit also

noted what it claimed to be a factual distinction between the cases stating:

> Moreover, Hoechst is factually distinguishable and therefore inapplicable to our analysis in the instant case. The sale of the division by Hoechst to American Mirrex was made pursuant to an agreement that American Mirrex would provide substantially the same employee benefits as those Hoechst had provided. Thus, the employees/plaintiffs were subsequently employed by the plan sponsor that assumed both the obligations and assets of the retirement plan.
>
> In contrast, the transfer of the Engine Part Division from Clevite to JPI in the instant case entailed no such agreements. JPI, the successor employer, assumed neither the obligations nor the assets of the plan. Instead Clevite later sold the plan to a third party, The Pullman Company. Thus, unlike the former Hoechst employees, the former Clevite employees ceased all employment with the sponsor of the plan."

Hunger, 12 F.3d at 121-122.

The supposed factual distinction between the cases simply does not exist. In this case, as in the Gillis case, Clevite had agreed with JPI that the employees would be hired by JPI, or JPI would be responsible for their severance, and that the employees would be hired with substantially similar benefits to those they enjoyed while they were employed by Clevite. The facts of this case are thus indistinguishable from the facts of the Gillis case. The facts regarding the purchase agreement, which the Eighth Circuit had apparently overlooked, were part of the record on

appeal and printed in the joint appendix submitted with appellant's brief and were pointed out to the court in plaintiff's petition for rehearing. Despite the fact that the court's factual distinction was shown to be incorrect, the Eighth Circuit denied a rehearing on the issue, placing the Eighth Circuit squarely opposed to the position of the Third Circuit.

The Third Circuit found no reason to eliminate employees' rights to continue to accrue credit toward reaching an early retirement subsidy if, as in this case, the employees continued in their same positions, at the same location, with the same job functions, but the assets of the employing division were sold to another employer. The Eighth Circuit found that the asset sale was determinative, eliminating any right of the plaintiffs in this case to accumulate credit toward the early retirement subsidy.

The basic disagreement between the circuits is over whether the Retirement Equity Act of 1984 is ambiguous. In both the Gillis and Hunger cases the plaintiffs contended that Section 204(g) prevents any reduction in their early retirement subsidy if they remain in their position until the required age and service are met. Plaintiffs in both cases quote the provision of Section 204(g) which states

> In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfied (either before or after the amendment) the preamendment conditions for the subsidy.

29 U.S.C. § 1054(g). The Third Circuit acknowledges that on its face, that language can plausibly be read to require that plaintiffs be allowed to qualify for the early retirement subsidy, after the asset sale. The Eighth Circuit contends that the language cannot plausibly be read to allow plaintiffs to accumulate credit after the asset sale, even though the purchase agreement required Clevite to give plan participants credit for time worked at JPI. The Third

Circuit, finding the language could plausibly be read to protect employee early retirement benefits, examined the legislative history of the Retirement Equity Act in order to determine the intent of Congress with respect to the protection of employee early retirement subsidies. The Eighth Circuit expressly refused to consider the legislative history, finding that it is clear that not working for the plan sponsor eliminates the right of an employee to accumulate credit toward the early retirement subsidy.

The Third Circuit approach is correct. The language of the Retirement Equity Act of 1984 can plausibly be read to require that a person who remains in the same position cannot be deprived of an early retirement subsidy by a plan amendment, even if that plan amendment is accompanied by a sale of the assets of the employer to another employer. The issue is what Congress intended to be necessary to eliminate an employee's ability to accumulate credit toward qualifying for the early retirement subsidy. The answer to that question is not stated in the statute, making resort to legislative history both appropriate and necessary. The Eighth Circuit's refusal to consider legislative history led it to a result which is demonstrably contrary to the intent of Congress. This Court should grant certiorari in this case to effectuate the intent of Congress to protect these employees and their early retirement subsidies.

The legislative history shows that Congress intended that early retirement subsidies could lawfully be reduced if the employee has not met the preamendment early retirement criteria at the time of "separation from service." Congress has carefully drafted a comprehensive and reticulated statute in ERISA. Nachman Corp. v. Pension Benefits Guaranty Corporation, 446 U.S. 359 (1980). The Internal Revenue service had interpreted "separation from service" as used elsewhere in ERISA before the Retirement Equity Act of 1984 was even considered by Congress. During that consideration, Congress stated that early retirement benefits could be removed if there was a separation from service before the employee had met the conditions of the plan. Congress

is presumed to have understood the meaning of that phrase as applied to ERISA when using the phrase to describe what was to occur after passage of the Retirement Equity Act. In other words, it was manifestly the intent of Congress that after the Retirement Equity Act of 1984, early retirement benefits for which employees had worked could not be taken away from them unless and until they actually stopped working at the same job in which they had begun to accrue the benefits, regardless of any corporate reorganizations or transfers of assets which might take place changing the identity of the employing entity.

What the Third Circuit found in Gillis is that it is the substance of the employees' continued employment which determines their eligibility to continue accruing credit to qualify for the early retirement subsidy. Clevite could not eliminate the early retirement subsidies of plaintiffs, and take that money for its own use, by amending the plan. The Third Circuit's analysis simply states that Clevite cannot do indirectly what it cannot do directly.

The value of the early retirement subsidies for which plaintiffs had worked did not simply disappear. In the multiple transactions of selling the Engine Parts Division to JPI and the Plan and its assets to the Pullman Company, someone received the value of those early retirement subsidies. The value of those subsidies were extracted from the employees who had worked years to accumulate them just as Congress intended would not happen by its enactment of the Retirement Equity Act of 1984. This Court should grant certiorari in this case in order to clarify the law under ERISA to comply with the intent of Congress that an employer may not take to itself the value of early retirement subsidies for which its employees had worked, either through plan amendments or plan amendments coupled with corporate reorganizations. The Third Circuit recognized the intent of Congress and properly applied Section 204(g), and this Court should grant certiorari in this case in order to reverse the Eighth

Circuit and recognize that the Third Circuit's interpretation is the one intended by Congress in enacting the Retirement Equity Act of 1984.

Defendants in this case argued that Clevite could have terminated all of the employees, eliminating any question that their early retirement subsidies would not be owed to them, since actual termination is a separation from service. Defendants argued that they should not be penalized for the "humanitarian" gesture of contracting with JPI to guarantee the employment of Clevite's employees. One of the benefits, however, of purchasing an existing company rather than starting up a new company is the ability to obtain both existing facilities and experienced, trained employees. JPI thus derived a benefit from purchasing Clevite's assets and hiring its existing employees. Suffice it to say, that Clevite clearly did not agree to accept less money for the sale of the Engine Parts Division in order to assure that its employees would be hired by JPI. Clevite and JPI recognized that the existing employee base was an asset of Clevite and contracted to transfer the employees along with the other assets of the company. In doing so, the parties agreed that the employees would continue to receive the same benefits and would continue to accrue credit toward the Clevite plan for time worked at JPI. Defendants chose to ignore the purchase agreement and amended the plan to give employees only a portion of what had been bargained for.

Moreover, had Clevite chosen to terminate all its employees, rather than allow JPI to continue their employment, Clevite would have faced serious questions of age and benefits discrimination. If the intent of the terminations would have been to eliminate the early retirement subsidies, the termination would have been prohibited by ERISA. The purchase agreement benefited both JPI and Clevite and allowed Clevite to remain in compliance with state and federal antidiscrimination laws. That decision is not an altruistic one for which they are now being punished, it is a rational business decision that has benefits for Clevite and

associated costs. This action seeks to prevent Clevite from accepting the benefits of selling a business with an existing employee base without paying the associated costs.

ERISA is a remedial statute which should be liberally construed to achieve its essential purpose. See, e.g., Scott v. Gulf Oil Corp., 754 F.2d 1499 (9th Cir. 1985); Hankin v. Northrop Corp., 921 F.2d 1118 (9th Cir. 1990). ERISA was enacted to protect employee retirement benefits, hence the name Employee Retirement Income Security Act. The Retirement Equity Act of 1984 was also passed to protect employee rights and benefits. Congress saw that some companies had early retirement programs, and that employees could work for years with an employer, planning to take advantage of the early retirement opportunity, only to have that opportunity taken away by an amendment to the plan. An employee could turn down offers from other companies in order to continue to accumulate credit toward that early retirement and see those plans crushed in an instant. Congress acted to prevent such occurrences. Employers may not amend a plan to eliminate early retirement subsidies, and apply that amendment to employees that had worked for years to accumulate the benefits. In passing the Retirement Equity Act, Congress explained that it would be permissible to eliminate early retirement subsidies if an employee had not met the preamendment requirements of the plan at the time the employee separated from service. Congress chose a term with a distinct and definite meaning under ERISA and the parallel sections of the Internal Revenue Code to describe the situation in which early retirement subsidies will be lost. Congress has thus spoken with clarity on the subject involved in this suit, and the Eighth Circuit's refusal to listen to Congress' direction should not be allowed to stand.

This is not an isolated situation. The exact same fact pattern has arisen in both the Gillis and Hunger cases. That situation has also been addressed by lower courts in at least three cases. See, Hollingshead v. Burford Equipment Company, 809 F.Supp. 906

(M.D.Ala. 1992); Lear Siegler Aerospace Products Holding Corp. v. Smiths Industries, Inc., 1990 U.S. Dist. Lexis 2887 (S.D.N.Y. 1990); and Berard v. Royal Electric, Inc., 1992 U.S.Dist. Lexis 8464 (D.R.I. 1992). In Hollingshead, the Court was presented with the information regarding the IRS interpretation of "separation from service" and thus found that the employees in that case must be allowed to "grow into" their early retirement subsidies after the transfer of the assets of the employer to another company, as the third circuit did in Gillis. In Lear Siegler, the court was not presented with the information regarding the IRS interpretation of "separation from service" and thus found that the employees in that case were not allowed to "grow into" their early retirement subsidies after the transfer of the assets of the employer to another company. The Berard court, in the same circuit as the Lear Siegler court, simply followed Lear Siegler without comment. This issue has already caused differing results in differing jurisdictions and is likely to arise again.

Each year asset transfers occur affecting many employees. See, e.g., Davis, Gerald F. and Stout, Suzanne K. "Organization Theory and the Market for Corporate Control" Administrative Science Quarterly, Vol 37, No. 4, p. 650 (December 1992) (Documenting the large number of takeovers of Fortune 500 companies over the last 10 years and noting that in most cases the same employees remain with the company after the takeover). Potentially, all employees that work for employers that undergo a corporate transfer could be affected by the decision in this case. As the law now stands, in the Eighth Circuit employee early retirement subsidies are not protected after a corporate transfer, in the Third Circuit they are, and in lower courts in other circuits there is similar confusion. Employee rights and benefits, protected by Congress through ERISA and the Retirement Equity Act of 1984, should not depend on the address of the employee or the employee's employer. Congress intended to protect employee early retirement subsidies unless and until the

employees left their positions. Congress intended to protect employees who continue in the same position at the same location after a transfer of the assets of the employer to another company. The effect of these corporate transfers on the ability of employees to take advantage of early retirement benefits which they have worked for years to obtain is an important issue facing the nation as a whole which potentially affects thousands of citizens of the United States. Congress has spoken on this matter as recognized by the Third Circuit, and as ignored by the Eighth Circuit. This Court should grant certiorari of this case in order to effect the intent of Congress and eliminate the judicial legislation undertaken by the Eighth Circuit in this case.

CONCLUSION

Facing factually indistinguishable cases, the Third Circuit and Eighth Circuit came to different conclusions as to the intent of Congress in passing the Retirement Equity Act of 1984. The correct interpretation of that Act is important to American corporations and the employees of those corporations. This Court should grant review of this important issue in order to clarify the eligibility of employees for benefits as the result of a corporate reorganization. The petitioners, Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl, therefore respectfully request this Court to grant a writ of certiorari to the United States Court of Appeals for the Eight Circuit to review the case of Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl, for themselves and all others similarly situated, v. AB, CD, EF, and GH, whose true and correct names are unknown, Plan Administrators, Fiduciaries, Named Fiduciaries, Committee Members and Trustees of the Clevite Industries, Inc. Hourly Retirement Plan, The Pullman Company, and Clevite Industries, Inc., 12 F.3d 118 (8th Cir. 1993).

Respectfully submitted,

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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. ____

In the

Supreme Court of the United States

October Term, 1993

RICHARD H. HUNGER, LLOYD L. BETCHER and LAWRENCE F. POSSEHL, on behalf of themselves and all others similarly situated,

Petitioners,

v.

AB, CD, EF, and GH, whose true and correct names are unknown, Plan Administrators, Fiduciaries, Named Fiduciaries, Committee Members and Trustees of the CLEVITE INDUSTRIES, INC. HOURLY RETIREMENT PLAN, THE PULLMAN COMPANY, and CLEVITE INDUSTRIES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 92-2729

Richard H. Hunger; Lloyd L Betcher; Lawrence F. Possehl, on behalf of themselves and all others similarly situated,

Appellants,

v.

AB; CD; EF; GH, whose true and correct names are unknown; PLAN ADMINISTRATORS, Fiduciaries, Named Fiduciaries, Committee Members and Trustees of the Clevite Industries, Inc. Hourly Retirement Plan; THE PULLMAN COMPANY; CLEVITE INDUSTRIES, INC.,

Appellees,

Appeal from the United States District Court for the District Of Minnesota

---

Submitted: May 13, 1993
Filed: December 17, 1993

Before BEAM, Circuit Judge, ROSS, Senior Circuit Judge, and MORRIS SHEPPARD ARNOLD, Circuit Judge.

ROSS, Senior Circuit Judge.

Appellants Hunger, Betcher and Possehl, former employees of Clevite Industries, Inc., appeal from the district court's grant of summary judgment against them based on its conclusion that the anti-cutback provision of ERISA, section 204(g), 29 U.S.C. § 1054(g), did not preclude the elimination of their early retirement subsidy. Based on our careful review of the record, briefs and arguments of the parties, we affirm the decision of the district court.

I.

Appellants were employees of the Engine Parts Division of appellee Clevite Industries in Lake City, Minnesota, and were covered under Clevite's Hourly Retirement Plan (the Plan). Pursuant to the Plan, those who retired at age 65 received normal retirement benefits, while those who retired before age 65 received normal retirement benefits reduced by .5% per month for each month before the participant's sixty-fifth birthday. However, an "early retirement subsidy" was also available whereby a participant could retire under certain circumstances before the age of 65 with a normal retirement benefit reduced by only .2% per month. In general, in order to receive the early retirement subsidy, a participant must be at least 55 years of age and have completed ten years of service.

In February 1987, Clevite sold the assets of its Engine Parts Division to JPI Merger, Inc. (JPI), but did not sell the assets of the Plan. The appellants, along with other former Clevite employees, were offered employment with JPI. The appellants accepted this offer and continued to perform the

same jobs at the same location for JPI. In July of 1987, The Pullman Company (Pullman) purchased the stock of Clevite, as well as the Plan. Pullman refused to give appellants the early retirement subsidy because the appellants had not met the age and service requirements to qualify for the subsidy before the Engine Parts Division sale to JPI.[1]

Appellants brought suit against Clevite, the Plan, and Pullman (collectively referred to as "appellees") for violating the anti-cutback provision of ERISA, section 204(g), 29 U.S.C. § 1054(g). The district court granted appellees' motion for summary judgment concluding that section 204(g) of ERISA did not prevent Pullman from refusing to provide the early retirement subsidy because appellants had not met the Plan's age and service requirements to qualify for the subsidy before their employment with Clevite ended.

II.

Congress enacted ERISA to ensure that an employee would not lose fully vested, accrued benefits in the event the employer terminated or amended its pension plan. Nachman Corp. v. PBGC, 446 U.S. 359, 374-75 (1980). In 1984, ERISA was amended to add section 204 (g), which was intended to prevent retirement plans from being amended to reduce or eliminate a participant's early retirement subsidy. Section 204(g) prohibits decreases in a participant's accrued benefit through amendment of the plan on the following basis:

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, . . .

---

[1] At the time Clevite's assets were sold to JPI, appellant Possehl was 55 and had been employed by Clevite for 5 years. Betcher was 50 and had been employed for 30 years, and Hunger was 49 and had been employed with Clevite for 9 years.

(2) For purposes of paragraph (1), a plan amendment which has the effect of -

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy.

29 U.S.C. § 1054(g) (emphasis added).

Under section 204(g), a plan sponsor may not decrease a benefit subsidy through a plan amendment when the participant has satisfied the preamendment requirements for the subsidy at the time of the amendment or would otherwise be able to satisfy such requirements following the amendment. Thus, section 204 (g) extends to all participants the right to "grow into" a benefit subsidy by satisfying the plan's preamendment eligibility requirements following the amendment to the plan. This limited benefit protection for retirement subsidies finds support in the legislative history of section 204(g):

The bill generally protects the accrual of benefits with respect to participants who have met the requirements for a benefit as of the time the plan is amended and participants who subsequently meet the preamendment requirements. The bill does not,

> however, prevent the reduction of a subsidy in the case of a participant who, at the time of separation from service (whether before or after the plan amendment), has not met the preamendment requirements.

S. Rep. No. 575, 98th Cong., 2d Sess. 28, reprinted in 1984 U.S.C.C.A.N. 2547, 2574. The Senate Report clearly provides that "the prohibition against reduction of a benefit subsidy . . . applies to a participant only if the participant meets the conditions imposed by the plan on the availability of the subsidy." Id.

The first issue to consider in the present case is whether there has been an amendment to the Plan which serves to eliminate or reduce the early retirement subsidy. The appellants argue that the Third Amendment to the Plan, enacted on February 14, 1987, after the sale of the division to JPI, served to eliminate the availability of the early retirement subsidy for those employees who were subsequently employed by JPI. The Third Amendment provides in relevant part:

> (f) Notwithstanding any other provisions of the Plan to the contrary, an Employee who is transferred to employment with J.P. Industries, Inc. . . . pursuant to the sale of the assets of the Company's Engine Parts Division and who, at the time of transfer, had not completed ten Years of Vesting Service or attained Normal Retirement Age shall receive credit for Vesting Service for each full year . . . in which he is employed by J.P.I. . . . Such an individual's Termination of Vesting Service will be the date the individual terminates employment with J.P.I. Employment with J.P.I. will not be taken into account for purposes of determining Benefit Service

or, except as provided above, for any other purposes under the Plan.

The Third Amendment, in effect, serves to confer an additional benefit upon those former Clevite employees who were subsequently employed by JPI by permitting them to earn additional service credit toward a deferred vested benefit during their employment with JPI. However, because of the limiting language in the last sentence of the amendment, this benefit enlargement does not apply to the early retirement subsidy. Appellants contend this limitation operates as an amendment to the Plan by eliminating their opportunity to receive the early retirement subsidy. However, this refusal to extend the opportunity to grow into the eligibility for the subsidy can only be considered an amendment which would trigger section 204(g), if the appellants were otherwise entitled to such extension under the original Plan. In other words, but for the Third Amendment, the appellants would have been entitled to earn additional age and service credits toward the early retirement subsidy by their subsequent employment with JPI.

The Plan in the instant case, however, prohibits such a possibility. Here, under the plain language of the Plan, the employees will earn age and service credits as participants of the Plan "until [their] employment with the Company and Affiliates terminates." The term "Company" is defined in the Plan as "Imperial Clevite, Inc." Therefore, once the participants began their employment with JPI, they were no longer employed by Clevite and were thus unable to satisfy the Plan's express eligibility conditions.

Our foregoing analysis renders two conclusions, both of which are fatal to appellants' claim. First, because the appellants were never entitled to apply employment with a successor company to their age and service requirements under the original terms of the Plan, there was no amendment

to the Plan by virtue of the Third Amendment, and the protection of section 204(g) does not come into play. Second, even if we assume there was an amendment to the Plan, the protections of section 204(g) apply only if the participant can "satisf[y] (either before or after the amendment) the preamendment conditions for the subsidy." 29 U.S.C. § 1054(g)(2). Because the appellants are no longer employed by Clevite, as expressly required by the conditions of the Plan, they are unable to satisfy the preamendment eligibility conditions and section 204(g) will not serve to preserve their entitlement to the early retirement subsidy.

Relying on the legislative history of section 204(g) as support for their position, the appellants cite a recent case from the Third Circuit which held that an employee who continues in the same job for a successor employer is not "separated from service"[2] so as to preclude his or her opportunity to grow into the retirement subsidy. Gillis v. Hoechst Celanese Corp., 4 F.3d 1137, 1147 (3d Cir. 1993). The Third Circuit supported its conclusion primarily through reference to Internal Revenue Service revenue rulings that the court conceded do not directly apply to either section 204 (g) of ERISA, nor to its companion section of the Internal Revenue Code, 26 U.S.C. § 411(d)(6). Although the court noted that the "separated from service" language does not expressly appear in section 204(g), it found, nonetheless, that "in interpreting neighboring sections of the IRC, the IRS has consistently taken the position that an employee will be considered separated from service "only upon the employee's death, retirement, resignation, or discharge, and not when the

---

[2] The legislative history of § 204(g) provides in part that "[t]he bill does not, however, prevent the reduction of a subsidy in the case of a participant who, at the time of separation from service (whether before or after the plan amendment), has not met the preamendment requirements. S. Rep. No. 575, 98th Cong., 2d Sess. 28, reprinted in 1984 U.S.C.C.A.N. 2547, 2574 (emphasis added).

employee continues in the same job for a different employer as a result of liquidation, merger, consolidation, etc. of the former employer." Hoechst, 4 F.3d at 1146 (quoting Rev. Rul. 79-336 which interprets "separated from service" under IRC § 402).

We find the appellants' reliance on Hoechst to be unpersuasive. First, because the plain language of section 204 (g) applies only to a "participant who satisfies . . . the preamendment conditions for the subsidy," we find it unnecessary to resort to the legislative history in order to decide the question presented under the facts of this case. See In re Erickson Partnership, 856 F.2d 1068, 1070 (8th Cir. 1988) ("[w]hen we find the terms of a statute unambiguous, judicial inquiry is complete.") (quoting Burlington Northern R.R. Co. v. Oklahoma Tax Comm'n, 481 U.S. 454, 461 (1987)). Here, the Plan expressly provides that the participant may only acquire age and service credits while employed with Clevite. The appellants' transfer to JPI now prevents them from satisfying the express conditions of the Plan.

Moreover, Hoechst is factually distinguishable and therefore inapplicable to our analysis in the instant case. The sale of the division by Hoechst to American Mirrex was made pursuant to an agreement that American Mirrex would provide substantially the same employee benefits as those Hoechst had provided. Thus, the employee/plaintiffs were subsequently employed by the plan sponsor that had assumed both the obligations and assets of the retirement plan.

In contrast, the transfer of the Engine Parts Division from Clevite to JPI in the instant case entailed no such agreements. JPI, the successor employer, assumed neither the obligations, nor the assets of the Plan. Instead, Clevite later sold the Plan to a third party, The Pullman Company. Thus, unlike the former Hoechst employees, the former Clevite employees ceased all employment with the sponsor of the Plan.

III.

In summary, then, we conclude that the appellees did not violate the anti-cutback provisions of ERISA, section 204(g), by denying the appellants the early retirement subsidy. Accordingly, the judgment of the district court is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 92-2729MNST
Richard H. Hunger, et al,

Plaintiffs-Appellants,

vs.

AB; CD; EF; GH; whose true and
correct names are unknown, et al,

Defendants-Appellees.

Appeal from the United States District Court for the District of Minnesota.

The petition for rehearing by the panel is denied.

January 21, 1994

Order Entered at the Direction of the Court:

S/S
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Glenn E. Johnson, Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl, on behalf of themselves and all others similarly situated,

Civil File No. 3-91-0471

Plaintiffs,

v.

MEMORANDUM AND ORDER

AB, CD, EF and GH, whose true and correct names are unknown, Plan Administrators, Fiduciaries, Named Fiduciaries, Committee Members and Trustees of the Clevite Industries Inc. Hourly Retirement Plan, The Pullman Company, and Clevite Industries, Inc.,

Defendants.

Richard A. Miller, Esq., and Teresa K. Fett, Esq., Gordon-Miller-O'Brien, 1208 Plymouth Building, 12 South Sixth Street, Minneapolis, MN 55402-1529, and Matthew B. Newman, P.A., Suite 500, 701 Fourth Avenue South, Minneapolis, MN 55415, for plaintiffs.

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I. INTRODUCTION

This matter is before the court upon the defendants' motion for summary judgment (Docket No. 14) and upon the plaintiffs' motion for summary judgment (Docket No. 17). For the following reasons, the court grants the defendants' motion and denies the plaintiffs' motion.

II. FACTS

The plaintiffs were employees of the Clevite Industries, Inc. Engine Parts Division. The plaintiffs were covered by the Clevite Industries, Inc. Hourly Retirement Plan. The Plan provided for a Normal Retirement Benefit payable at age 65. Qualified participants who retired before age 65 under the Plan were entitled to a normal retirement benefit reduced by .5% per month for each month before the participant's sixty-fifth birthday. If the participant attained the age of 55 and completed ten years of service before retiring, the normal retirement benefit was only reduced by 2% for each of the first sixty months by which the participant's benefit commencement date preceded his or her sixty-fifth birthday.

In February 1987, Clevite sold the assets of the Engine Parts Division to JPI Acquisition, Inc. JPI did not purchase the assets of the Plan, which were retained by Clevite. The

plaintiffs continued to perform the same jobs at the same location for JPI. Clevite passed the Third Amendment of Imperial Clevite Inc. Hourly Plan which provided in part:

> 5. By adding the following new subparagraph 3.5(f) to the Plan immediately after subparagraph 3.5(e) thereof:
>
> (f) not withstanding any other provisions of the Plan to the contrary, an Employee who is transferred to employment with J.P Industries, Inc. . . . pursuant to the sale of the assets of the company's Engine Parts Division and who, at the time of transfer, had not completed ten Years of Vesting Service or attained Normal Retirement Age shall receive credit for Vesting Service for each full year . . . in which he is employed by J.P.I., in accordance with the foregoing rules generally applicable to Vesting Service with an Employer. Such an Individual's Termination of Vesting Service will be the date the individual terminates employment with J.P.I. Employment with J.P.I. will not be taken into account for purposes of determining Benefit Service or, except as provided above, for any other purposes under the Plan and thus, if an Employee described above completes ten Years of Vesting Service, the type and amount of benefit he will be entitled to shall be the type and amount of benefit he otherwise would have been entitled to at the time of transfer if he then had completed ten years of Vesting Service. A transferred Employee who had completed ten years of Vesting Service or attained Normal Retirement Age prior to the time of transfer shall be entitled to the same type and amount of benefit he was entitled to at the time of the transfer.

In July 1987, the Pullman Company acquired the stock of Clevite, including the Plan. Pullman has refused to give the plaintiffs the .3% subsidy because when the plaintiff's employment with Clevite ended, none of the plaintiffs satisfied both the age and service requirements of the Plan.

III. DISCUSSION

A court shall render summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c) (1987). Section 204(g) of ERISA provides:

> (g) Decrease of accrued benefits through amendment of plan
>
> (1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(c)(8) or 1441 of this title.
>
> (2) For purposes of paragraph (1), a plan amendment which has the effect of-
>
> > (A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or
> >
> > (B) eliminating an optional form of benefit,
>
> with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the

> amendment) the preamendment conditions for the subsidy. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

29 U.S.C. § 1054(g). The legislative history of Section 204(g) explains that Section 204(g):

> generally protects the accrual of benefits with respect to participants who have met the requirements for a benefit as of the time a plan is amended and participants who subsequently meet the preamendment requirements. The bill does not, however, prevent the reduction of a subsidy in the case of a participant who at the time of separation of service (whether before or after the plan amendment) has not met the preamendment requirements.

S. Rep. No. 575, 98th Cong., 2d Sess. 28, reprinted in 1984 U.S. Code Cong. & Admin. News 2547,2574. Section 204(g) only applies, therefore, when the participant satisfies the preamendment conditions for the subsidy. See, Adams v. LTV Steel Mining Co., 936 F.2d 368,371 (8th Cir. 1991), cert. denied, 112 S.Ct. 968 (1992).

The plaintiffs argue that they should be allowed to credit age and years of service attained as employees of JPI because an employee can accumulate age and years of service until the time of separation of service. The plaintiffs rely on selected sections of the Internal Revenue Code, and cases interpreting "separation of service" in the contexts of benefit distributions under Section 402 of the IRC and severance pay which hold that a "separation of service" does not occur when the employee continues to work in the same job only for a

different employer after a liquidation, merger, or consolidation. See, United States v. Haggart, 410 F.2d 449 (8th Cir. 1969); United States v. Martin, 337 F.2d 171 (8th Cir. 1964).

The term "separation of service" has been treated differently, however, under other sections of the IRC. For example, in the context of qualified trusts under Section 401(a) of the IRC, the IRS General Counsel has stated that:

> A determination as to whether a severance from employment has occurred should be made on the basis of whether or not the employee continues to be employed by the employer maintaining the plan . . . rather than on the basis of whether the employee continues to work on the same job for a different employer as a result of a liquidation, merger, or consolidation, etc.

Gen. Couns. Mem. 39,824 (Aug. 15, 1989).

In Lear Siegler Aerospace Products Holding Corp. v. Smiths Industries, inc., C. A. No. 88 Civ. 1528 (JMC) , 1990 U. S. Dist. LEXIS 2887 (S.D.N.Y. Mar. 16, 1990), the district court directly addressed whether employees can satisfy preamendment requirements after the sale of a division under Section 204 (g). The Lear court held that, "an employee can no longer "grow into" his right to a subsidy where he no longer works for the plan sponsor." Id. at 38-9.

In this case, the Clevite Industries Inc. Hourly Retirement Plan conditioned its subsidy upon the participant attaining fifty-five years of age and completing ten years of service while employed by Clevite. Clevite Plan, §§ 1.1, 4.2(a). At the time of the sale, Mr. Possehl was fifty-five years old and had been employed by Clevite for approximately five years. Mr. Betcher was fifty years old and had been employed by

Clevite for approximately thirty years. Mr. Hunger was forty-nine years old and had been employed by Clevite for approximately nine years.[1]

After the sale of assets to JPI, it was no longer possible for the plaintiffs to either attain the age of fifty-five as an employee of Clevite or to accumulate ten years of service as an employee of Clevite. The plaintiffs will never be able to satisfy the preamendment conditions of the Plan. For that reason, the "anti-cutback" clause of ERISA does not apply to the plaintiffs' claims. No genuine issues of fact remain for trial and the defendants are entitled to judgment as a matter of law.

Accordingly, IT IS ORDERED that:

The defendants' motion for summary judgment (Docket No. 14) is GRANTED. The plaintiffs' motion for summary judgment (Docket No. 17) is DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated June 30, 1992.

S/S

Paul A. Magnuson
United States District Court Judge

[1] At the time of the sale, Mr. Johnson was fifty-seven and had been employed by Clevite for approximately thirty-three years. On January 1, 1989, he began to receive his pension benefit calculated with the .3% subsidy.

IMPERIAL CLEVITE INC.
HOURLY RETIREMENT PLAN

CLEVITE INC. HOURLY RETIREMENT PLAN

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PREAMBLE

This Plan stall be known as Imperial Clevite Inc. Hourly Retirement Plan.

Pursuant to an agreement dated June 22, 1981 between Gould Inc., a Delaware corporation and Imperial Clevite Inc., a Pennsylvania corporation, Imperial Clevite Inc. acquired the business which had been conducted by the Industrial Group of Gould Inc. (hereinafter referred to as the "Industrial Group") in or from the United States of America.

Imperial Clevite Inc. has established this Plan in accordance with an Employee Benefits Agreement dated September 28,1981 between Imperial Clevite Inc. and Gould Inc. to provide benefits for former Industrial Group employees who were transferred to employment with Imperial Clevite Inc. on that date and are eligible for participation in this Plan at least equal to those benefits which they had accrued up to January 1, 1981 under the Gould Inc. Pension Plan, as well as any other benefits they accrue under this Plan. Benefits also will be provided under this Plan for former Industrial Group employees who retired or terminated prior to September 28, 1981 but otherwise would have been eligible for participation in this Plan equal to the benefits they became entitled to receive under the Gould Inc. Pension Plan at the time of their retirement or termination. Assets and liabilities representing such benefits accrued under the Gould Inc. Pension Plan with respect to the former Industrial Group employees described above will be transferred to this Plan, as described in Section 11. The Plan also has been established to provide benefits for employees of Imperial Clevite Inc. who had not previously participated under the Gould Inc. Pension Plan but become eligible for participation in this Plan.

IMPERIAL CLEVITE INC.
HOURLY RETIREMENT PLAN

Section 1. The Plan

1.1 The Plan. Imperial Clevite Inc. (hereinafter referred to as the "Company") hereby adapts the Imperial Clevite Inc. Hourly Retirement Plan (hereinafter referred to as the "Plan") for its eligible employees effective September 28, 1981. The Plan is a continuation of and successor to the Gould Inc. Pension Plan (hereinafter referred to as the "Predecessor Gould Plan") maintained by Gould Inc. (hereinafter referred to as "Gould"). as that plan applied to former Industrial Group employees prior to September 28, 1981.

1.2 Employees who Retire or Separated Prior to September 28, 1981 and their Beneficiaries. The provisions set forth in this Plan are applicable only to Employees in the employ of "the Employer on or after September 28, 1981. Members who retired or separated prior to such date, or beneficiaries of such Members, shall be entitled to benefits under this Plan, if any, based upon the terms of the Predecessor Gould Plan as it existed an the date of retirement or separation.

Section 2. Definitions

2.1 Definitions. Whenever used in the Plan, the following terms shall have the respective meanings set forth below unless otherwise expressly provided herein, and when the defined meaning is intended the term is capitalized:

(a) "Act" means the Employee Retirement Income Security Act of 1974.

(b) "Actuarial Equivalent" means a benefit having the same value as the benefit which it replaces, based on the actuarial assumptions and methods

which are adopted by Committee, upon advice of the Actuary, and in use under the Plan on the date on which such determination is made.

(c) "Actuary" means a person (or a firm of which he is a member) who is an "enrolled actuary" under the Act, and who is chosen by but independent of the Company.

(d) "Affiliate" means any corporation, including the Company, i.e., either a subsidiary corporation or a parent corporation of the Company, which is a member of a "controlled group" of corporations within the meaning of the Act.

(e) "Committee" means the Imperial Clevite Inc. Benefit Plan Committee appointed by the Company to administer the Plan as described in subsection 7.1 hereof.

(f) "Effective Date" means September 28, 1981.

(g) "Effective Date of Coverage" means the date the Plan was or shall be effective with respect to each Participating Group, as set forth in the applicable Supplement hereto.

(h) "Employee" means any person employed by an Employer or a Nonparticipating Affiliate.

(i) "Employer" means any Affiliate which elects to become a party to the Plan by adopting the Plan for the benefit of its eligible Employees in the manner prescribed in Section 10 hereof. or any

one or more or all of such adopting Affiliates, as the context indicates.

(j) "Inactive Participant" means an Employee who was a Participant in a Participating Group but who is transferred to and is in a position of employment either:

(1) As an Employee of an Employer where he does not meet the requirements to be a Participant in a Participating Group; or

(2) As an Employee of a Nonparticipating Affiliate.

(k) "Member" includes the term Participant and Inactive Participant and any former employee (including a former Industrial Group employee) who is entitled to a vested benefit under the Plan.

(l) "Nonparticipating Affiliate" means any Affiliate which is not an Employer.

(m) "Other Pension" means that part or all of any annuity, pension or payment of similar kind to which a Member for which the Member receives Benefit Service hereunder and which is provided under any other defined benefit plan qualified under Section 401(a) of the Internal Revenue Code and maintained by the Company or an Affiliate.

(n) "Participant" means any Employee of an Employer who, on the Effective Date of

Coverage applicable to his Participating Group or thereafter, is a member of such Participating Group, and who has met the additional eligibility requirements of the Plan applicable to his Participating Group, as set forth in Section 3 hereof and in the applicable Supplement hereto, to be and become a Participant.

(o) "Participating Group" means each separate group of Employees who are classified by their Employer by specific reference to division, location or otherwise as constituting a separate Participating Group covered by the Plan, as set forth in the applicable Supplement hereto.

(p) "Plan Year" means the twelve month period beginning January 1 of each calendar year and ending December 31 of the same calendar year.

(q) "Prior Plan" means any defined benefit plan or defined contribution plan which is qualified under Section 401(a) of the Internal Revenue Code of 1954, as amended, and which, in whole or in part, is amended, to constitute this Plan on the Effective Date of coverage applicable thereto (concurrently converting into a defined benefit plan any such part, of a defined contribution plan which is so amended into this Plan), by transfer to this Plan of accounts or credits or benefits or otherwise, so that after the date of such amendment the provisions of this Plan applicable thereto shall be a continuation of and shall supersede and replace in their entirety such provisions of such defined benefit plan or defined

contribution plan which were so amended in the manner specified in the Supplement applicable thereto.

(r) "Prior Trust or Contract" means any agreement in the nature of a trust, or any insurance contract, forming apart of, or constituting the funding or financing provisions for, any Prior Plan, and which, in whole or in part, is amended into a Trust Agreement under this Plan or any group annuity contract forming a part of this Plan on the Effective Date of Coverage applicable thereto, by transfer of assets in cash or in kind or otherwise, so that after the date of such amendment the provisions of the Trust Agreement or group annuity contract shall be a continuation of and shall supersede and replace in their entirety such provisions of such agreement or insurance contract of the Prior Plan which were so amended in the manner specified in the Supplement applicable thereto. In addition, any such Prior Trust or contract may be designated as a part of this Plan, either temporarily or permanently, to continue to provide benefits under this Plan which had been accrued or earned under a Prior Plan from or through such Prior Trust or Contract.

(s) "Retirement Age" means a Member's Normal Retirement Age, or his Early Retirement Age, or his Vested Retirement Age, whichever is applicable, as shown below, subject to such exceptions for any Participating Group as may be specified in any Supplement hereto:

(1) "Normal Retirement Age" means a Member's age when he has both attained his 65th birthday and completed five years of Vesting Service.

(2) "Early Retirement Age" means a Member's age when he has both attained his 55th birthday (but not his 65th) and completed at least ten years of Vesting Service.

(3) "Vested Retirement Age" means a Member's age when he has completed ten years of Vesting Service before his Early Retirement Age.

(t) "Retirement Date" means a Member's Normal Retirement Date, or his Early Retirement Date, or his Vested Retirement Date, whichever is applicable, as shown below, subject to such exceptions for any Participating Group as may be specified in any Supplement hereto:

(1) "Normal Retirement Date" means the first day of the calendar month next following the date a Member's employment with the Company and Affiliates terminates because of his normal retirement, an or after he attains his Normal Retirement Age.

(2) "Early Retirement Date" means the first day of the calendar month next following the date a Member's with the Company and Affiliates terminates because of his early retirement, on or after he attains his Early

Retirement Age but not his Normal Retirement Age.

(3) "Vested Retirement Date" means for a Member whose employment with the Company and Affiliates terminates after he has attained his Vested Retirement Age for reasons other than normal or early retirement or death, the first day of any calendar month next following his 55th birthday as of which he makes application for the vested retirement benefit to begin, but in no event later than the first day of the calendar month next following his Normal Retirement Age.

(u) "Retirement Fund" means any Trust Fund or insurance fund established and maintained under any Trust Agreement or insurance contract designated as a part of the Plan to finance the benefits under the Plan.

(v) "Supplement" means the separate Supplement to this Plan containing the necessary provisions pertaining to the Participating Group which is to be covered by the Plan. Any such Participating Group shall become covered by the Plan as of the Effective Date of Coverage set forth in said Supplement which shall incorporate this Plan by reference thereto.

(w) "Trust Agreement" means the Imperial Clevite Inc. Master Pension Trust and any such other agreement in the nature of a trust established to

form a part of the Plan to receive, hold, invest, and dispose of any Trust Fund.

(x) "Trust Fund" means the assets of every kind and description held under any Trust Agreement to the extent allocable to the Plan.

(y) "Trustee" means the corporation, and/or persons, acting as trustee under any Trust Agreement at any time of reference. The Trustee shall be a fiduciary under the Trust Agreement.

2.2 Gender and Number. Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and neuter, and the definition of any term herein in the singular may also include the plural.

Section 3. Participation and Service

3.1 Eligibility to Participate. Each Employee who simultaneously fulfills the following requirements shall be eligible to become a Participant:

(a) He is an Employee of an Employer who meets the requirements far membership in a Participating Group which are set forth in a Supplement hereto.

(b) If he is in a collective bargaining unit, there is an agreement between his Employer and the collective bargaining agent for employees in such unit which provides coverage of him under this Plan.

(c) He must be employed upon an hourly rate wage basis.

(d) If he is employed in a division, plant or other unit acquired by an Employer as the result of an acquisition by such an Employer after September 23, 1981, the Employer must designate as eligible in a Supplement hereto the class of employees to which he belongs.

(e) He must fulfill any additional eligibility requirements to Participate set forth in the Supplement applicable to him.

3.2 Date of Participation. An Employee who meets all eligibility requirements set forth in subsection 3.1 shall become a Participant an the date when he meets all such eligibility requirements. Anything in this subsection to the contrary notwithstanding, any person who is an Employee on the Effective Date and who was participating in the Predecessor Gould Plan on September 27, 1981 shall continue as a Participant hereunder.

3.3 Duration. An Employee who becomes a Participant shall continue to be a Participant or Inactive Participant until his employment with the Company and Affiliates terminates, and also shall continue to be a Member thereafter for as long as he is entitled to receive any benefits hereunder if he thereupon becomes eligible to receive (then or thereafter) a benefit hereunder.

3.4 Transferred Employees.

(a) An employee who is transferred into employment where he becomes a Participant hereunder after the Effective Date shall be credited with Vesting Service computed as provided in subsection 3.5 hereof for periods both before and after such transfer. He shall be credited with Benefit Service hereunder for his employment with the Employer in a Participating Group after such transfer.

(b) A Participant who is transferred into employment as an Employee where he becomes an Inactive Participant after the Effective Date shall continue to accrue Vesting Service (but not Benefit Service) under this Plan during the period he is an Inactive Participant. Any retirement benefit he may become entitled no under this Plan shall be determined on the basis of his Vesting Service before and after such transfer, on the Benefit Service he had prior to the transfer, and on the applicable benefit formula under the Plan in effect at the time of the transfer.

3.5 Vesting Service. Vesting Service is used to determine whether an Employee's Vesting Service and Benefit Service prior to a Termination of Service shall be reinstated if he is re-employed and to determine his eligibility to receive benefits. An Employee shall receive credit for Vesting Service determined as follows:

(a) Service shall be determined in completed full years and fractions of years in excess of completed full years, each full twelve months of Service constituting a completed full year of Service and any part of Service in excess of completed full years counted to the nearest fractional one-twelfth of a year.

(b) Except as otherwise provided in an applicable Supplement, the Vesting Service any Employee shall have on the Effective Date shall be equal to his "Vesting Service", if any, under the Predecessor Gould Plan through September 27, 1981.

(c) After the Effective Date, an Employee shall receive credit for Vesting Service from the later to occur of September 28, 1981, or his date of hire by the Company or an Affiliate to his Termination Of Service, and for such additional period as may be set forth in the applicable Supplement.

(d) If a former industrial Group employee who is entitled to a vested benefit under the Plan incurred a Termination of Employment (as defined in the Predecessor Gould Plan) after December 31, 1975 and prior to September 28, 1981, and is re-employed as an Employee after September 27, 1981, the "Service" he had under the Predecessor Gould Plan at such Termination of Employment shall herein stated upon his re-employment in the same manner and to the same extent as it would have been reinstated under the Predecessor Gould Plan if he had then been re-employed by Gould.

(e) If an Employee who incurs a Termination Of Service after the Effective Date is subsequently re-employed as an Employee, he shall be considered a new Employee for purposes of the Plan, except:

(1) If at such Termination Of Service he became eligible to receive then or thereafter a benefit under Section 4 hereof, the Vesting Service and

Benefit Service he had at such Termination Of Service shall be reinstated upon his re-employment.

(2) If he is re-employed before twelve months have elapsed after such Termination Of Service, the Vesting Service and Benefit Service he had at such Termination Of Service shall he reinstated upon his re-employment, and he shall receive credit for vesting Service for the period between his Termination Of Service and his re-employment.

(3) If neither (1) nor (2) above is applicable. and if the continuous period between his Termination Of Service and his re-employment does not equal or exceed the Vesting Service he had at such Termination Of Service, the Vesting Service and Benefit Service he had at such Termination Of Service shall be reinstated upon his re-employment, provided he completes one year of Vesting Service upon his re-employment.

3.6 Benefit Service. Benefit Service is used to determine the amount of a Member's benefit. A Member shall receive credit for Benefit Service determined as follows:

(a) Except as otherwise provided in an applicable Supplement, the Benefit Service any Member shall have as of January 1, 1981, shall be equal to his "Benefit Service," if any, under the Predecessor Gould Plan through December 31, 1980.

(b) For employment after December 31, 1980, a Member's Hours of Service in each Plan Year after December 31, 1980, as determined under subsection 3.8 hereof, shall first be reduced by any Hours Of Service for which he receives credit -

(1) for any period prior to his becoming a Participant, unless otherwise provided in the applicable Supplement;

(2) for any period during which he is an Inactive Participant;

(3) for any period between any Termination Of Service and re-employment as an Employee; and after applying such reductions a Member shall receive credit for Benefit Service for each Plan Year after December 31, 1980, according to the following schedule:

Hours Of Service	Years of Benefit Service
Under 320	None
320 to 479	.2
480 to 639	.3
640 to 799	.4
800 to 959	.5
960 to 1119	.6
1120 to 1279	.7
1280 to 1439	.8
1440 to 1599	.9
1600 and over	1.0

(c) The maximum Benefit Service for which any member shall receive credit hereunder shall be thirty years, except as otherwise provided in an applicable Supplement.

3.7 A Termination Of Service. A Termination Of Service shall occur on the earlier to occur of (a) or (b) below:

(a) The date as of which an Employee quits, is discharged, or dies; or

(b) The first anniversary of the first day of an Employee's absence from employment with the Company and Affiliates (with or without pay) for any reason other than in (a) above, such as vacation, sickness, disability, leave of absence, layoff or military service.

Notwithstanding the foregoing, an Employee who is absent from employment due to a layoff shall not incur a Termination Of Service before such absence results in a loss of seniority under any applicable collective bargaining agreement or published Employer policy; and further, an Employee who is absent on account of service in the armed forces of the United States of America shall not incur a Termination Of Service in contradiction of federal law.

The fact that an Employee who is a Participant becomes an Inactive Participant shall not constitute a Termination Of Service, but the foregoing rules shall continue to apply to such an Employee during the period he is an inactive Participant.

3 .8 Hours Of Service. An Employee shall receive credit for Hours Of Service under the Plan, as follows:

(a) One hour for each hour for which he is directly or indirectly paid, or entitled to payment, by the company or Affiliates for the performance of duties during the applicable computation period for which his Hours of Service are being determined under the Plan. (These hours shall be credited to the Employee for the computation period or periods in which the duties were performed. They shall include hours for which back pay has been either awarded or agreed to

by the Company or an Affiliate, irrespective of mitigation of damages. Hours relating to back pay shall be credited to the computation period or periods to which the back pay award or agreement pertains. but with no duplication of credit for hours.)

(b) One hour for each hour, in addition to the hours in paragraph (a) above, for which he is directly or indirectly paid, or entitled to payment, by the Company or Affiliates, for reasons other than for the performance of duties during the applicable computation periods; provided, however, no more than 501 hours shall be credited under this paragraph (b) on account of any single period during which the Employee performs no duties. (These hours shall be counted in the computation period in which either payment is actually made or amounts payable to the Employee come due.)

(c) One hour for each hour of the normally scheduled work hours for each week during any period he is absent from work with the Company or Affiliates because of occupational injury or disease incurred in the course of his employment and who receives Workmen's Compensation payments an account of such absence, with no duplication of credit for hours.

(d) One for each hour of the normally scheduled work hours for each day during any period he is absent from work for union business on a full-time basis not exceeding one year.

(e) For the purposes of determining Hours of Service. the rules set forth in paragraph (b) and (c) of Section 2530.200b-2 of 29 CFR Part 2530 are incorporated in by reference, and Gould and its subsidiaries shall be considered "Affiliates" for the period January 1, 1981 through September 27, 1981.

3.9 Gould Employment. Notwithstanding any other provision of this Plan, and except as may be required by the Act, employment with Gould or any of its subsidiaries shall not be considered in determining a Member's Vesting or Benefit Service under the plan except to the extent herein above provided for former Industrial Group employees who are either Employees an the Effective Date or are entitled to vested benefits under the Plan.

Section 4. Benefits

4.1 Normal Retirement Benefits.

(a) Eligibility. A Member whose employment with the Company and Affiliates terminates on or after he has attained his Normal Retirement Age shall be eligible to receive a normal retirement benefit under the Plan.

(b) Amount. A Member's monthly normal retirement benefit shall be equal to the sum of the amounts set forth in each Supplement applicable to each Participating Group in which he was at any time a Participant before his employment with the Company and Affiliates terminated; based upon his Benefit Service accrued while a Participant in that Participating Group and the benefit rate in affect thereunder at his termination of employment in that Participating Group.

(c) Commencement and Duration. Monthly normal retirement benefit payments shall begin as of the Member's Normal Retirement Date. When payments begin they shall be paid monthly thereafter as of the first day of each succeeding month during his lifetime; provided, however, if he is re-employed as an Employee his benefit payments shall be discontinued and shall not be paid or accrue during the period of such re-employment, but he shall have his Vesting Service and Benefit Service he had at the time of his retirement reinstated. Upon his subsequent retirement his eligibility for a benefit and the amount of the benefit shall be determined and calculated and paid as if he were then first retired based upon such reinstated Vesting Service and Benefit Service plus any Vesting Service and Benefit Service earned following the date of re-employment. in no event, however, will a Member's retirement

benefit at subsequent retirement be less than his benefit at his prior retirement.

4.2 Early Retirement Benefits.

(a) Eligibility. A Member whose employment with the Company and Affiliates terminates on or after he has attained his Early Retirement Age but before his Normal Retirement Age, shall be eligible to receive an early retirement benefit under the Plan.

(b) Amount. A Member's monthly early retirement benefit shall be an amount computed in the same manner as a normal retirement benefit based upon his Benefit Service and the provisions of the Plan in effect on his Early Retirement Date, reduced, except as otherwise provided in an applicable Supplement, by one-half of one percent for each complete calendar month by which his first early retirement benefit payment precedes the first day of the month next following his 65th birthday.

(c) Commencement and Duration. Monthly early retirement benefit payments shall begin as of the member's Early Retirement Date, unless he elects on a form and in the manner provided by the Committee to have then begin on the first day of any subsequent month not later than the first day of the month next following his 65th birthday. When payments begin they shall be paid monthly thereafter as of the first day of each succeeding month during his lifetime; provided, however, if he is re-employed as an Employee his benefit payments shall be discontinued and shall not be paid or accrue during the period of such re-employment, but he shall have his Vesting

Service and Benefit Service he had at the time of his retirement reinstated. Upon his subsequent retirement his eligibility for a benefit and the amount of the benefit shall be determined and calculated and paid as if he were then first retired based upon such reinstated Vesting Service and Benefit Service plus any Vesting Service and Benefit Service earned following the date of re-employment, but such benefit shall be actuarially reduced to account for any early retirement benefit payments he may have received prior to his re-employment and prior to his 65th birthday. In no event, however. will a Member's retirement benefit at subsequent retirement be less than his benefit at his prior retirement.

4.3 Deferred Vested Retirement Benefits.

(a) Eligibility. A Member whose employment with the Company and Affiliates terminates on or after he has attained his Vested Retirement Age but before his Early Retirement Age, shall be eligible to receive a deferred vested retirement benefit under the Plan.

(b) Amount. A Member's monthly deferred vested retirement benefit shall be an amount computed in the same manner as a normal retirement benefit based upon his Benefit Service and the provisions of the Plan in effect at his termination of employment, reduced by one-half of one percent for each complete calendar month by which his first deferred vested retirement benefit payment precedes the first day of the month next following his 65th birthday.

(c) Commencement and Duration. Monthly deferred vested retirement benefit payments shall begin as of the member's Vested Retirement Date. When payments begin they shall be paid monthly thereafter as of the first day of each succeeding month during his lifetime; provided, however, if a Member entitled to a deferred vested retirement benefit hereunder shall be re-employed as an Employee before or after the date his benefit payments begin, any benefit payments he may be receiving shall be discontinued and shall not be paid or accrue during the period of such re-employment, but he shall have his Vesting Service and Benefit Service he had at the time of his termination of employment reinstated. Upon his subsequent retirement or termination of employment his eligibility for a benefit and the amount of the benefit shall be determined and calculated and paid as if he were then first retired or terminated based upon such reinstated Vesting Service and Benefit Service plus any Vesting Service and Benefit Service earned following the date of re-employment, but such benefit shall be actuarially reduced to account for any deferred vested retirement benefit payments he may have received prior to his re-employment and prior to his 65th birthday In no event, however, will a Member's retirement benefit at subsequent retirement or termination be less than his benefit at his prior termination.

4.4 Elective Pre-retirement (Joint and Survivor) Surviving Spouse Benefits.

(a) Eligibility and Conditions. A Member who has not attained his Normal Retirement Age, and whose

employment with the Company and Affiliates has not terminated, may elect that if his spouse (to whom he has been married at least one year on the effective date of the election) shall be living at his death, and if his death occurs after such election shall have become effective but before the first to occur of his termination of employment with the Company and Affiliates or his Normal Retirement Age, a surviving spouse benefit shall be payable to such spouse during the spouse's further lifetime, Such election is subject to the following conditions.

(1) The election provided in this subsection 4.4 shall have an effective date of the date the Member attains his Early Retirement Age.

(2) The election shall be revoked automatically upon the death of the Member or his spouse prior to the effective date of the election.

(3) The election may be revoked by the Member in writing either before or after its effective date in accordance with the rules therefor adopted by the Committee consistent with the regulations under the Act prescribed by the Secretary of the Treasury; provided. However. it will he automatically revoked in the event that either (i) the spouse dies before the Member or (ii) the Member becomes divorced from the designated spouse. After revocation, another election may be made by the Member in accordance with this paragraph (a).

(b) Notice of Election. The Committee shall furnish the Member a written notice of the availability of the

election explaining the terms and conditions of the election and its effect on the monthly benefit otherwise payable in accordance with regulations under the Act prescribed by the Secretary of Treasury.

(c) Amount of Benefits.

(1) The reduced amount of the monthly retirement benefit payable to a Member at his retirement (and accordingly under subsection 4.5 hereof if applicable), if he does not die prior to the first to occur of his termination of employment with the Company and Affiliates or his Normal Retirement Age, shall be equal to an amount determined by reducing the monthly retirement benefit otherwise payable to the Member by the following "Reduction Percentage": 100%, less .04167% multiplied by the number of complete months during which the option is in effect between the effective date of the option and the first to occur of his termination of employment with the Company and Affiliates or his Normal Retirement Age.

(2) The monthly amount of the surviving spouse's benefit payable to a spouse eligible therefor pursuant to subsection 4.4(a) above if the Member dies before the first to occur of his termination of employment with the Company and Affiliates or his Normal Retirement Age, but after the effective date of the election, shall be equal to 50% of the reduced amount of the monthly retirement benefit the deceased Member would have been entitled to receive beginning as

of his early retirement if he had retired under subsection 4.2 hereof on the day an which he died (with the automatic election under subsection 4.5 hereof in effect). Such reduced amount of the monthly retirement benefit shall be computed after giving effect to the increased costs of the pre-retirement election as specified in the reduction in paragraph (1) above.

(d) Commencement and Duration. The monthly surviving spouse's benefit shall be payable to the spouse for life, beginning as of the first day of the calendar month next following the date of the Member's death.

4.5 Automatic post-retirement (joint and Survivor) Surviving Spouse Benefits.

(a) Eligibility and Conditions. In lieu of the monthly retirement benefit otherwise payable under subsection 4.1 or 4.2 or 4.3 hereof, or in lieu of any disability retirement benefit initially payable on or after his Early Retirement Age under an applicable Supplement, a married Member who is eligible for such a retirement benefit initially payable on or after his Early Retirement Age, shall be deemed to have elected automatically a reduced amount of monthly retirement benefit payable to him with the provisions that if his spouse (to whom he is married at least one year when his benefits begin) shall be living at the effective date of the election and also at his death after such automatic election shall have become effective a surviving spouse benefit shall be payable

to his spouse. Such automatic election is subject to the following conditions:

(1) The automatic election provided in this subsection 4.5 shall have an effective date of the first to occur of: (i) the date the Member's Disability retirement benefits begin, but only if they begin on or after his Early Retirement Age. or (ii) the Member's Normal, Early or Vested Retirement Date, or (iii) his Normal Retirement Age.

(2) A Member may prevent the automatic election provided in this subsection 4.5 only be executing a specific written rejection of such automatic election an a form approved by the Committee and filing it with the Committee during a period consisting of at least 90 days following the furnishing of all applicable information to the Member and ending prior to the effective date of the election specified in (1) above or such later date as shall be required by regulations under the Act prescribed by the Secretary of the Treasury; and during such period shall be revocable by the Participant in writing.

(b) Notice of Election. The Committee shall furnish the Member a written notice of the automatic election explaining the effect of the election on the monthly benefit otherwise payable and the availability of rejecting the election, in accordance with regulations under the Act prescribed by the Secretary of Treasury.

(c) Amount of Benefits.

(1) For a Member who is deemed to have made the automatic election Pursuant to this subsection 4.5 (and who does not reject it as provided in subsection 4. 5(a)(2)above), the reduced amount of his monthly retirement benefit referred to in Subsection 4.5(a) above shall be the Actuarial Equivalent of the benefit otherwise payable to the Member, giving effect to the increased costs of the automatic election under this subsection 4.5.

(2) The surviving spouse benefit payable to the surviving spouse of a Member who is deemed to have made an automatic election Pursuant to this subsection 4.5 and who dies after such election becomes effective, shall be a monthly benefit for the further lifetime of such surviving spouse equal to 50% of the reduced amount of such Member's monthly retirement benefit as determined in paragraph (1) immediately above.

(d) Commencement and Duration. The monthly surviving spouse's benefit shall be payable to the spouse for life, beginning as of the first day of the calendar month next following the Member's death after the election becomes effective.

4.6 Optional Forms of Benefits. A Member may elect to receive (instead of any benefit to which he may otherwise be entitled under the Plan) an optional form of benefit computed as an Actuarial Equivalent benefit. The optional forms of benefits are:

(a) A benefit in an actuarially reduced amount payable monthly to the Member for the remainder of his lifetime; provided, however, that if the Member dies before receiving one hundred twenty such monthly payments, the remainder of such payments shall be payable to a beneficiary designated by the Member; and

(b) A benefit in an actuarially reduced amount payable monthly to the Member for the remainder of his lifetime; provided, however, that upon the death of the Member, a monthly benefit of two-thirds of that reduced amount shall be payable to a beneficiary designated by the Member at the time of the election of this option, for the remainder of the lifetime of the beneficiary.

Any Member who desires to elect an optional form of benefit shall sign and file with the Committee an application therefor before the first benefit payment is due. A Member who has elected an optional form of benefit may revoke or change his election before the first benefit payment is due by signing and filing an appropriate revocation or change with the Committee.

In the event of the death of both the Member who has elected an optional form of benefit provided for under (a) above and his beneficiary before completion of the one hundred twenty payments elected, the commuted value of the remainder of the payments shall be paid in a single sum a the estate of the last to die of the Member and his beneficiary.

In the event of the death of the beneficiary of a Member who has elected an optional form of benefit provided for under (b)

above before the date when the first payment is due to either of them, the Member shall be deemed to have revoked his election.

In the event of the death of a Member who has elected an optional form of benefit provided for under (a) or (b) above before the first payment is due, the Member shall be deemed to have revoked his election.

In the event a Member dies before he incurs a Termination Of Service but after his Normal Retirement Ale, and has elected either of the optional forms of benefit provided for under this subsection, the deceased Member's beneficiary shall be entitled to the benefit to which he would have been entitled if the Member had retired on the first day of the month in which he died.

4.7 Adjustment for Other Pension. If any Member entitled to a retirement benefit pursuant to this Plan is or shall become entitled to any Other Pension, then the amount of retirement benefits payable to such Member shall be reduced by the amount of any such Other Pension paid or payable to him, unless such Other Pension is reduced to prohibit duplication in the same manner as is set forth in this subsection 4.7.

For the purpose of determining the amount of reduction of any benefit under this Plan for Other Pension, it shall be assumed that the Other Pension benefits are paid as a monthly income in the same farm as the benefits under this Plan, regardless of the manner in which they are actually paid. In no event shall the reduction for such Other Pension reduce the benefits under this Plan for the same period of Benefit Service below zero.

4.8 Maximum Annual Benefits. Notwithstanding any other provisions of this Plan to the contrary. the annual benefit provided under "this defined benefit Plan" from Employer contributions for any member shall in no event exceed the lesser of (a) or (b) below:

(a) An amount equal to the lesser of:
   (1) $12,450, or the smaller Actuarial Equivalent thereof payable at age 55 if payments begin before age 55; or
   (2) an amount equal to 10% of the annual average of the highest three consecutive calendar years of compensation paid to the Member by the Employer during his active participation in the Plan;

   multiplied by the number of years of his Vesting Service, not to exceed ten years. As of January 1 of each year, 1/10 of the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year to reflect increases in the cost of living shall become effective as the amount in (1) above for the Plan Year ending within that calendar year. Any increase in the maximum benefit under this clause shall apply to all benefits payable with respect to former as well as resent members.

(b) An amount which will not permit the Member's "defined benefit plan fraction" for any year to exceed his "adjusted defined benefit plan fraction" for the year. For this purpose:

   "Defined benefit plan fraction" for any year is a fraction -

(i) the numerator of which is the projected annual benefit of the Member under this defined benefit Plan determined as of the close of the year, and

(ii) the denominator of which is the Projected annual benefit of the Member under this defined benefit Plan determined as of the close of the year if such Plan provided the maximum benefit allowable under paragraph (a) above.

"Adjusted defined benefit plan fraction" for the year is a fraction which is 1.39 reduced by his "defined contribution plan fraction" for the year.

"Defined contribution plan fraction" for the year is a fraction -

(i) the numerator of which is the sum of the "annual account additions" to the Member's account as of the close of the year under "any defined contribution plan" of the employer, and

(ii) the denominator of which is the sum of the maximum amount of annual account additions to such account which could have been made for such year and for each prior year of his Vesting Service with the Employer.

The maximum amount of annual account additions which could have been made for each such year is an amount equal to the lesser of -

(i) $25,000 (or such higher annual amount as maybe determined under regulations issued

by the Secretary of the Treasury to reflect increases in the cost of living); or

(ii) 25% of a Member's gross pay for the year.

"Annual account additions" means the sum for any year of

(i) the Employer's contribution made for him under any defined contribution plan for the year; and

(ii) the lesser of:

a. the Member's contributions to such defined contribution plan that are in excess of 6% of his gross pay for the year, or

b. one-half of the Member's contributions to the defined contribution plan for the year;

(iii) forfeitures allocated to him under the defined contribution plan for the year.

"This defined benefit Plan" means this Plan and all other defined benefit plans of the Employer, considered as one plan; except that after the limitations have been determined, any reduction in benefits in any such defined benefit plan will be made in this Plan first, unless such other plan is the Imperial Clevite Inc. Salaried Retirement Plan.

"Any defined contribution Plan" of the Employer means all defined contribution benefit plans of the Employer, considered as one plan.

4.9 Payment of Small Amounts. If the Actuarially Equivalent lump sum value of any retirement benefit otherwise

payable under the Plan is less than $1,750, the Committee may direct that such lump sum value be paid in full discharge of all liability under the Plan.

Section 5. Non-Alienation of Benefits

5.1 Non-Alienation. Except as may be required in a particular circumstance, the Retirement Fund shall not in any manner be liable for or subject to the debts or liabilities of any Member and no retirement or other benefit at any time payable from the Retirement Fund shall be subject in any manner to alienation, sale, transfer, assignment, pledge, or encumbrance of any kind.

Section 6. Incompetency

6.1 Incompetency. Every person receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent until the date on which the Committee receives a written notice, in a form and manner acceptable to it, that such person is incompetent and that a guardian, conservator, or other person legally vested with the care of his person or estate, or both, has been appointed for him. In the event a guardian or conservator of the estate of any person receiving or claiming benefits under the Plan shall be appointed by a court of competent jurisdiction, payments shall be made to such guardian or conservator provided than proper proof of appointment and continuing qualification are furnished in a form and manner acceptable to the Committee. Any such payments so made shall be a complete discharge of any liability therefor under the Plan.

Section 7. Administration

7.1 Committee. The Plan shall be administered by the Imperial Clevite Inc. Benefit Plan Committee the members of which are appointed by the Company. The Committee shall be composed of as many members as may be appointed from time to time, and shall hold office at the pleasure of the appointing authority. The Committee shall be the administrator of the Plan and the Committee shall be a fiduciary under the Plan, as a named fiduciary in accordance with the Act.

7.2 Compensation and Expenses. The members of the Committee shall serve without compensation for their Services as as such. All expenses incurred by the Committee. if not paid by the Employer, shall be paid from the Retirement Fund.

7.3 Manner of Action. A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions adopted, and other actions taken by the Committee at any meeting shall be by vote of a majority of those present at any such meeting. Upon concurrence in writing of a majority of the members at the time in office, action of the Committee may be taken otherwise than at a meeting.

7.4 Chairman, Secretary, and employment of specialists. The members of the Committee shall elect one of their number as Chairman and shall elect a Secretary who may, bum need not, be a member of the Committee. They may authorize one or maze of their number or any agent to execute or deliver any instrument or instruments in their behalf, and may employ at the Company's expense such counsel, auditors, and other specialists and such clerical, actuarial and other services as they may require in carrying out the provisions of the Plan.

7.5 Records. All resolutions, proceedings, acts and determinations of the Committee shall be recorded by the Secretary thereof under his supervision, and all such records together with such documents and instruments as may be necessary for the administration of he Plan, shall be preserved in the custody of the Secretary.

7.6 Administration. The Committee shall be responsible for the administration of the Plan, including instructing the Trustee concerning all payments which should be made out of the Trust Fund pursuant to the provisions of the Plan. The Committee shall have all such powers as may be necessary to carry out the provisions hereof and may, from time to time, establish rules for the administration of the Plan and the transaction of the Plan's business. In making any such determination or rule, the Committee shall pursue uniform policies as from time to time established by the Committee and shall not discriminate in favor of or against any Participant. The Committee shall have the exclusive right to make any finding of fact necessary or appropriate for any purpose under the Plan including but not limited to the determination of the eligibility for and the amount of any benefit payable under the Plan. The Committee shall have the exclusive right to interpret the terms and provisions of the Plan and to determine any and all questions arising under the Plan or in connection with the administration thereof, including, without limitation, the right to remedy or resolve possible ambiguities, inconsistencies, or omissions, by general rule or particular decision. The Committee shall make, or cause to be made, all reports or other findings, necessary to meet the reporting and disclosure requirements of the Act which are the responsibility of "plan administrators" under the Act. To the extent permitted by law, all findings of act, determinations, interpretations, and decisions of the Committee shall be

conclusive and binding upon all persons having or claiming to have any interests or right under the Plan.

7.7 Application for Benefits. Each person eligible for a benefit under the Plan shall apply for such benefit by signing an application form to be furnished by the Committee. Each such person shall also furnish the Committee with such documents, evidence, data, or information in support of such application as it considers necessary or desirable.

7.8 Appeals from Denial of Claims. If any claim for benefits under the Plan is wholly or partially denied, the claimant shall be given notice in writing of such denial within a reasonable period of time, setting forth the following information:

(a) the specific reason or reasons for the denial;

(b) specific reference to pertinent Plan provisions on which the denial is based;

(c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary, and

(d) an explanation chat a full and fair review by the Committee of the decision denying the claim may be requested by the claimant or his authorized representative by filing with the Committee, within 90 days after such notice has been received, a written request for such review; and

(e) if such request is so filed, the claimant or his authorized representative may review pertinent

documents and submit issues and comments in writing within the same 90 day period specified in paragraph (d) above.

The decision of the Committee shall be made promptly, and not later than 60 days after the Committee's receipt of the request for review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review. The claimant shall be given a copy of the decision promptly. The decision shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based.

7.9 No Enlargement of Employee Rights. Nothing contained in the Plan shall be deemed to give any Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge or retire any Employee at anytime.

7.10 Indemnity for Liability. The Employer shall indemnify the members of the Committee, and any other fiduciary who is an officer, director or employee of the Company or of an Employer, against any and all claims, losses, damages, expenses. including counsel fees, incurred by such persons and any liability, including any amounts paid in settlement with the Company's approval, arising from such person's action or failure to act, except when the same is judicially determined to be attributable to the gross negligence or willful misconduct of such person.

Section 8. Financing

8.1 Financing. The Company shall maintain a Retirement Fund as a part of the Plan in order to implement and carry out the provisions of the Plan and to finance the benefits under the Plan, by entering into one or more Trust Agreements. Any Trust Agreement is designated as, and shall constitute, a part of this Plan and all rights which may accrue to any person under this Plan shall be subject to all the terms and provisions of any such Trust Agreement. The Company may modify any Trust Agreement from time to time to accomplish the purpose of the Plan and may replace any Trustee and appoint a successor Trustee or Trustees.

8.2 Contributions. The Employer shall make such contributions to the Retirement Fund as shall be required under accepted actuarial principles to at least be sufficient to maintain the Plan as a qualified employee defined benefit plan meeting the minimum funding standard requirements of the internal Revenue Code of 1954, as amended, subject to right of the Company to discontinue the Plan. Forfeitures arising under the Plan for any reason shall be used as soon as possible to reduce the Company's contributions under the Plan.

8.3 Non-reversion. Except as provided below in this subsection and in subsection 10.3, the Employer shall not have any right, title or interest in the contributions made by it under the Plan, and no part of the Retirement Fund shall revert to it or for its benefit, except that upon termination of the Plan and allocation and distribution of the Retirement Fund as provided herein, any funds remaining in the Retirement Fund after the satisfaction of all fixed and contingent liabilities shall, to the extent permitted by law, revert to the Employer.

Section 9. Amendment and Termination

9.1 Amendment and Termination. The Company expects the Plan to be permanent, but since future conditions affecting the Company cannot be anticipated or foreseen, the Company must necessarily and does hereby reserve the right to amend, modify or terminate the Plan, or discontinue making or reducing contributions to the Plan at any time. The Company may make such modification or amendments, which may be made retroactive, to the Plan that are necessary or appropriate to qualify or maintain the Plan as a plan meeting the requirements of Section 401(a) of the Internal Revenue Code of 1954 as now in effect or hereafter amended, or any other applicable provisions of the internal Revenue Code as now in affect or hereafter adopted or the regulations issued thereunder. No amendment of the Plan shall cause any part of the Retirement Fund to be used for, or diverted to purposes other than for the exclusive benefit of the Members or their beneficiaries covered by the Plan.

9.2 Distribution on Termination. In the event of the termination of the Plan, or in the event of complete discontinuance of contributions under the Plan, the assets then held in the Retirement Fund shall be allocated, after payment of all expenses of administration and liquidation, for the following purposes and in the following manner and order, to the extent of the sufficiency of such assets:

(a) First, to provide all or that part of his benefit under Section 4 hereof for each Member (or his spouse or beneficiaries) who either:

(1) Was receiving benefit payments at the date which is three years prior to the date of termination of the Plan, or

(2) Would have been receiving benefit payments at the date which is three years prior to the date of termination of the Plan if the Member had retired under subsection 4.1 or 4.2 prior to such date and had begun to receive benefit payments three years prior to the date of termination of the Plan,

which is equal to the smallest benefit (he was receiving or could have received) which would be provided for such person under the Plan based on its provisions as in effect during the five-year period ending on the date of termination of the Plan. Allocation shall be made on a prorata basis based on the then present value of the benefits under this paragraph (a), if assets are not sufficient to provide such benefits in full.

(b) Second, if any assets remain, to provide all or that part of his benefit under Section 4 hereof which is guaranteed under Section 4022 of the Act for each remaining Member (or his spouse or beneficiaries) who does not qualify under (a) above but who either:

(1) Began to receive benefit payments later than three years prior to the date of termination of the Plan, or

(2) Would have been receiving benefit payments on the date of termination of the Plan if the Member had retired under subsection 4.1 or 4.2 prior to such date and had been eligible to receive benefit payments thereunder on the date of termination of the Plan, or

(3) Had previously terminated or would have been eligible to terminate at the date of termination of the Plan and be eligible to receive deferred vested benefit payments under subsection 4.3 of the Plan, which is equal to the smallest benefit which would be provided

for such person under the Plan based on its provisions as in effect during the five-year period ending on the date of termination of the Plan. Allocation shall be made on a prorata basis based on the then present value of the benefits under this paragraph (b) if assets are not sufficient to provide such benefits in full.

(c) Third, if any assets remain, to provide that part, if any, of his benefit under Section 4 hereof for each Member (or his spouse or beneficiary) described in (a) and (b) above, which is not provided for under (a) or (b) above, in the following order of priority if such remaining assets are not sufficient to provide all of such part of such benefits for all such persons:

(1) To provide such part of the benefits which would be provided for such person under the Plan based on its provisions as in effect at the beginning of the five-year period ending on the date of termination of the Plan, and on a prorata basis based on the then present value of such benefits under this paragraph (1) if such assets are not sufficient to provide such benefits described in this paragraph (1) in full; provided, however, if such assets are more than sufficient to provide such benefits described in this paragraph (1) in full then the assets available under this paragraph (c) shall be allocated as provided in (2) below.

(2) To provide such part of the benefits which would be provided for such persons under the Plan based on its provisions as in effect as amended by the most recent Plan amendment effective during the five-year period ending on the date of termination of the Plan under which the assets under this paragraph (c) are sufficient to provide such benefits in full; and with

any assets remaining thereafter to be allocated to provide such part of the benefits which would be provided for such persons under the Plan based on its provisions as in effect as amended by each next succeeding Plan amendment effective during such five-year period.

(d) Fourth, if any assets remain, to provide benefits for each Member which are not provided for above, which have accrued to the date of termination of the Plan for Benefit Service to such date, and in the order of priority described in (c)(1) and (2) above if assets are not sufficient to provide such benefits in full.

(e) If any assets remain, they shall revert to the Employer as provided heretofore.

Notwithstanding the foregoing if such allocation would not provide a benefit for (i) any Member who was a participant in any Prior Plan which is integrated and merged into this Plan, or from which assets were transferred to this Plan, which will equal the benefit which would have been provided for him under such Prior Plan if it had terminated on the day before the effective date of integration and merger or transfer into this Plan, or (ii) any Member of this Plan who was a Member of this Plan on the day before such effective date of integration and merger or transfer, which will equal the benefit which would have been provided for him under this Plan if it had terminated on said day, after first subtracting from such Prior Plan benefit or this Plan's benefit the value of any payments he has received under this Plan, then his above allocation shall be increased to an amount which will provide such a benefit, and the above allocation to other persons who were not such participants in such Prior Plan or such Members in this Plan

shall be reduced to the extent necessary in the order or precedence above established.

The benefits to be provided by the allocations referred to above shall be fully vested and nonforfeitable as of the date of termination of the Plan for distribution to the persons entitled thereto, and distribution may be implemented through -

(i) continuance of the Retirement Fund, or

(ii) the establishment of a new retirement fund, or

(iii) the purchase of nontransferable annuity contracts, or

(iv) a combination thereof

provided, however, that the Committee upon finding that it is not practicable or desirable under the circumstances to do any of the foregoing with respect to some or all of the groups listed above may provide for allocation of a part or all of the assets of the Retirement Fund as Actuarial Equivalent cash payments to any or all of such groups.

9.3 Merger or Consolidation or Transfer. In the case of any merger or consolidation of the Plan with, or in the case of any transfer of assets or liabilities of the Plan to or from, any other plan, each Member in the Plan shall (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

9.4 Partial Plan Termination. Upon a partial termination of the Plan, the foregoing provisions of subsection 9.2 shall

only apply to the Members (or their spouses or beneficiaries) with respect to whom the Plan is being terminated and only to that portion of the Retirement Fund allocable to such Members.

Section 10 Relating to the Employers

10.1 Participation on the Plan. Any Affiliate which desires to become an Employer as described in 2.1 (i) hereof, may become a party to the Plan by adopting the Plan for the benefit of its eligible Employees, effective as of the date specified in such adoption:

(a) By filing with the Committee a certified copy of a resolution of its Board of Directors to that effect, together with a Supplement to become a part hereof containing the necessary provisions for each Participating Group it desires to have covered by the Plan, as the Committee may require; and

(b) By filing with the Committee a certified copy of a resolution of the Company's Board of Directors approving such adoption and said Supplement.

10.2 Action by Company or other Employers. Any action required or permitted to be taken under the Plan by the Company or any other Employer shall be by resolution of its Board of Directors or by a duly authorized committee of its Board of Directors, or by a person or persons authorized by resolution of its Board of Directors or such committee.

10.3 Reversion of Retirement Fund Assets.

(a) If the Internal Revenue Service initially determines that the Plan, as applied to an Employer does not

meet the requirements of a "Qualified Plan" under Section 401(a) of the Internal Revenue Code, the assets of the Retirement Fund attributable to contributions made by that Employer under the Plan shall be returned to that Employer within one year of the date of denial of qualification of the Plan as applied to that Employer.

(b) If a contribution or a portion of a contribution is made by an Employer as a result of a mistake of fact, such contribution or portion of a contribution shall mot be considered to have been contributed to the Retirement Fund by that Employer and, after having been reduced by any losses of the Retirement Fund attributable thereto, shall be returned to that Employer within one year of the date the amount is paid to the Retirement Fund.

(c) Each contribution made by an Employer is conditioned upon the continued qualification of the Plan under Section 401(a) of the Internal Revenue Code and the deductibility of such contribution as an expense for federal income tax purposes and, therefore, to the extent that a contribution is made by an Employer to the Plan for a period for which the Plan is not a qualified plan under Section 401(a) of the Internal Revenue Code or the deduction for a contribution made by an Employer is disallowed, then such contribution, or portion of a contribution, after having been reduced by any losses of the Retirement Fund attributable thereto, shall be returned to that Employer within one year of the date of determination of the nonqualified status of the Plan or the date of disallowance of the deduction.

Section 11. Predecessor Gould Plan

11.1 Transferred Benefit Accruals, Liabilities and Assets. on September 28, 1981 certain Participants in the Predecessor Gould Plan ceased to be covered under that plan but then became Participants in this Plan. This Plan shall continue coverage and the accrual of benefits for such Participants effective from January 1, 1981 or the date of participation under the Predecessor Gould Plan if later. This Plan also shall provide benefits to former Industrial Group employees who retired or terminated under the Predecessor Gould Plan prior to September 28, 1981 and would have qualified for participation in this Plan but for their retirement or termination equal to the benefits they became entitled to receive under the Predecessor Gould Plan at the time of their retirement or termination. All such liabilities which existed under the Predecessor Gould Plan as of January 1, 1981 for such Participants and Industrial Group employees, as well as the allocable share of the assets of the Predecessor Gould Plan as of January 1, 1981 attributable to such liabilities, shall be transferred to this Plan as soon as practicable after appropriate Internal Revenue Service approvals have been obtained with respect to such transfer. Such allocable share of assets shall be determined as of January 1, 1981, using the asset allocation procedures applied by the Pension Benefit Guaranty Corporation pursuant to Section 4044 of the Act and subject to the applicable provisions of the Employee Benefits Agreement between Gould and the Company dated September 28, 1981.

SUPPLEMENT ONE
of the
IMPERIAL CLEVITE HOURLY RETIREMENT PLAN

Imperial Clevite Inc. Participating Group No. _____ shall be covered by the Imperial Clevite Inc. Hourly Retirement Plan in accordance with the provisions of the Plan and on the following basis.

(a) Name of Participating Group: Participating Group No. ____.

(b) Group of Employees: All production and maintenance Employees of Imperial Clevite Inc. (the "Employer") on and after the Effective Date of Coverage who are located at the Lake City, Minnesota, plant and who are represented by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, Lodge 650 (the "Union").

(c) Effective Date of Coverage: Effective Date of the Plan.

(d) Additional Eligibility Requirements Under Subsection 3.1 of the Plan: None other than set forth in (b) above.

(e) Normal Retirement Benefit Under Subsection 4.1(b) of the Plan: A member's monthly normal retirement benefit shall be equal to the benefit rate in effect at his termination of employment multiplied by his years of Benefit Service. On June 1, 1970, the benefit rate in effect was $3.00. Effective as of the following dates the benefit race has been amended as shown below:

6-1-72	$ 3.50
6-1-73	4.50
6-1-74	5.25
8-12-75	6.25
8-12-76	7.25
10-16-78	7.75
10-1-80	8.25
10-1-81	9.00
10-1-82	9.75
10-1-83	10.25

(f) Maximum on Benefit Service: The maximum Benefit Service under subsection 3.6(c) of the Plan shall be 35 years (prior to October 1, 1981, 30 years) for this Participating Group.

(g) Death Benefit: Upon the death of a Member who has retired on his Normal Retirement Date under conditions that entitled him to a normal retirement benefit under the Plan, his beneficiary shall be entitled to a single payment of $500. Upon his Normal Retirement Date, a Member may designate his beneficiary by filing with the Committee a written designation of beneficiary. If the designated beneficiary should not survive the Member, the benefits shall be paid to the Member's surviving spouse; but if there be none, to his estate.

(h) Disability Retirement Benefit (Effective October 1, 1981):

(1) Eligibility. A member who incurs a Disability after he has attained age 40 and completed ten years of Vesting Service but before his Normal Retirement

Age, shall be eligible to receive a Disability retirement benefit under the Plan.

The term Disability means physical or mental incapacity expected to continue for life, which renders a Member unable to engage in any employment or occupation for remuneration or profit for which he is reasonably qualified by reason of his training, education and experience. The existence of such Disability shall be established by certification of entitlement to disability benefits under the Social Security Act and by the certificate of a medical doctor satisfactory to the Committee.

(2) Amount. A Member's monthly Disability retirement benefit shall be an amount computed in the same manner as a normal retirement benefit based upon his Benefit Service and the provisions of the Plan in effect at the date his Disability occurred, reduced until age 65 by benefits (other than a lump sum for loss of sight or a bodily member) relating to his Disability, paid to him under any Worker's Compensation law and by any periodic sickness, accident or disability benefits (except Federal Social Security disability benefits) paid or payable under any other plan or program, public or private, to which the Employer shall have contributed.

(3) Commencement and Duration. Monthly Disability retirement benefit payments shall begin as of the first day of the sixth month following the month in which the Disability occurred. When payments begin, they shall be paid monthly thereafter as of the first day of each succeeding month during his lifetime; provided, however, if his Disability ceases prior to his 65th

birthday, his Disability benefit payments shall be discontinued and,

(i) if he is not reemployed as an Employee, he shall be entitled to either an early or a deferred vested retirement benefit in accordance with Section 4 of the Plan, as the case may be, as if his employment terminated on the date his Disability ceased but based an the Benefit Service he had and the benefit rate in effect under the Plan at the date his Disability occurred; or

(ii) if he is reemployed as an Employee, he shall have his Vesting Service and Benefit Service he had at the time of his Disability reinstated. Upon his subsequent retirement his eligibility for a benefit and the amount of the benefit shall be determined and calculated and paid as if he were the first retired based upon such reinstated Vesting Service and Benefit Service plus any Vesting Service and Benefit Service earned following the date of reemployment.

The Committee shall have the right to verify the continuance of the Disability of a Member from time to time prior to his 65th birthday, at reasonable intervals, by requiring that the Member undergo a medical examination by a medical doctor designated by the Committee. If the Member refuses such examination, his Disability retirement benefit payments shall be suspended until he submits to such examination.

(i) Pre-Retirement Surviving Spouse Benefit: If a Member dies prior to the termination of his employment after having attained age 50 and completed ten years of Vesting Service and is a member of the group of

employees described in (b) above, Subsection 404 of the Plan shall not apply. In lieu thereof, the surviving spouse of such Member shall be entitled to a monthly surviving spouse benefit equal to 50% of the Member's accrued benefit at the time of his death beginning with the first day of the month following the Member's death and ending with the first day of the month in which the surviving spouse dies.

(j) Early Retirement Reductions: Effective as of August 12, 1976, the following provision shall replace subsection 4.2(b) of the Plan for this Participating Group:

A Member's monthly early retirement benefit shall be an amount computed in the same manner as a normal retirement benefit based upon his Benefit Service and the provisions of the Plan in effect on his Early Retirement Date, reduced by .2% for each complete calendar month, up to a maximum of 60 months, by which his first early retirement benefit payment precedes the first day of the month next following his 65th birthday, and also reduced by .5% for each complete calendar month by which his first early retirement benefit payment precedes the first day of the month next following his 60th birthday.

(k) Medicare Part B Supplement Benefit: If a Member retires from this Participating Group on or after October 1, 1981, then when he is receiving Normal or Early Retirement benefits under the Plan and is age 65 or over, an amount shall be added to the monthly retirement benefit otherwise payable to the Member for as long as he is entitled to a retirement benefit under the Plan equal to $5.50.

* * * * *

This amended supplement executed this____day of_____ 19___.

IMPERIAL CLEVITE, INC.

ATTEST:

By_____
Its_____President

By_____
Its_____Secretary

AMENDED
SUPPLEMENT ONE
of the
IMPERIAL CLEVITE INC. HOURLY RETIREMENT PLAN
(Amended through October 2, 1987)

Participating Group No. 1 shall be covered by the Imperial Clevite Inc. Hourly Retirement Plan in accordance with the provisions of the Plan and on the following basis:

(a) Name of Participating Group: Participating Group No. 1.

(b) Group of Employees: All production and maintenance Employees of Imperial Clevite Inc. (the "Employer") on and after the Effective Date of Coverage who are located at the Lake City, Minnesota, plant and who are represented by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, Lodge 650 (the "Union").

(c) Effective Date of Coverage: September 28, 1981. (Coverage under Predecessor Gould Plan effective June 1, 1970).

(d) Additional Eligibility Requirements Under Subsection 3.1 of the Plan: None other than set forth in (b) above.

(e) Normal Retirement Benefit Under Subsection 4.1(b) of the Plan: A Member's monthly normal retirement benefit shall be equal to the benefit rate in effect at

his termination of employment multiplied by his years of Benefit Service. On June 1, 1970, the benefit rate in effect was $3.00. Effective as of the following dates the benefit rate has been amended as shown below:

6-1-72	$ 3.50
6-1-73	4.50
6-1-74	5.25
8-12-75	6.25
8-12-76	7.25
10-16-78	7.75
10-1-80	8.25
10-1-81	9.00
10-1-82	9.75
10-1-83	10.25
10-1-84	10.75
10-1-85	11.25
10-1-86	11.75

For Members who retire on or after October 1, 1984 but before October 3, 1987,

(1) any retirement benefits due for months beginning on or after October 1, 1985 but before October 1, 1986 shall be based on an $11.25 benefit rate; and

(2) any retirement benefits due for months beginning on or after October 1, 1986 shall be based on an $11.75 benefit rate.

(f) Maximum on Benefit Service: The maximum Benefit Service under subsection 3.6(c) of the Plan shall be

35 years for this Participating Group (prior to October 1, 1981, the maximum was 30 years).

(g) Death Benefit. Upon the death of a Member who has retired on his Normal Retirement Date under conditions that entitled him to a normal retirement benefit under the Plan, his beneficiary shall be entitled to a single payment of $500. Upon his Normal Retirement Date, a Member may designate his beneficiary by filing with the Committee a written designation of beneficiary. If the designated beneficiary should not survive the Member, the benefits shall be paid to the Member's surviving spouse; but if there be none, to his estate.

(h) Disability Retirement Benefit (Effective October 1, 1981):

(1) Eligibility. A member who incurs a Disability after he has attained age 40 and completed ten years of Vesting Service but before his Normal Retirement Age, shall be eligible to receive a Disability retirement benefit under the Plan.

The term Disability means physical or mental incapacity expected to continue for life, which renders a Member unable to engage in any employment or occupation for remuneration or profit for which he is reasonably qualified by reason of his training, education or experience. The existence of such Disability shall be established by certification of entitlement to disability benefits under the Social Security Act and by the certificate of a medical doctor satisfactory to the Committee.

(2) Amount. A Member's monthly Disability retirement benefit shall be an amount computed in the same manner as a normal retirement benefit based upon his Benefit Service and the provisions of the Plan in effect at the date his Disability occurred, reduced until age 65 by benefits (other than a lump sum for loss of sight or a bodily member) relating to his Disability, paid to him under any Worker's Compensation law and by any periodic sickness, accident or disability benefits (except Federal Social Security disability benefits) paid or payable under any other plan or program, public or private, to which the Employer shall have contributed.

(3) Commencement and Duration. Monthly Disability retirement benefit payments shall begin as of the first day of the sixth month following the month in which the Disability occurred. When payments begin, they shall be paid monthly thereafter as of the first day of each succeeding month during his lifetime; provided, however, if his Disability ceases prior to his 65th birthday, his Disability benefit payments shall be discontinued and,

(i) if he is not reemployed as an Employee, he shall be entitled to either an early or a deferred vested retirement benefit in accordance with Section 4 of the Plan, as the case may be, as if his employment terminated on the date his Disability ceased but based on the Benefit Service he had and the benefit rate in effect under the Plan at the date his Disability occurred; or

(ii) if he is reemployed as an Employee, he shall have his Vesting Service and Benefit Service he had at the time of his Disability reinstated. Upon his subsequent retirement his eligibility for a benefit and the amount of the benefit shall be determined and calculated and paid as if this was his first retirement based upon such reinstated Vesting Service and Benefit Service plus any Vesting Service and Benefit Service earned following the date of reemployment.

The Committee shall have the right to verify the continuance of the Disability of a Member from time to time prior to his 65th birthday, at reasonable intervals, by requiring that the Member undergo a medical examination by a medical doctor designated by the Committee. If the Member refuses such examination, his Disability retirement benefit payments shall be suspended until he submits to such examination.

(i) Pre-Retirement Surviving Spouse Benefit: If a Member dies prior to the termination of his employment after having attained age 50 and completed ten years of Vesting Service and is a member of the group of employees described in (b) above, Subsection 4.4 of the Plan shall not apply. In lieu thereof, the surviving spouse of such Member shall be entitled to a monthly surviving spouse benefit equal to 50% of the Member's accrued benefit at the time of his death beginning with the first day of the month following the Member's death and ending with

the first day of the month in which the surviving spouse dies.

(j) Early Retirement Reductions: Effective as of August 12, 1976, the following provision shall replace subsection 4.2(b) of the Plan for this Participating Group.

> A Member's monthly early retirement benefit shall be an amount computed in the same manner as a normal retirement benefit based upon his Benefit Service and the provisions of the Plan in effect on his Early Retirement Date, reduced by .2% for each complete calendar month, up to a maximum of 60 months, by which his first early retirement benefit payment precedes the first day of the month next following his 65th birthday, and also reduced by .5% for each complete calendar month by which his first early retirement benefit payment precedes the first day of the month next following his 60th birthday.

(k) Medicare Part B Supplement Benefit: If a Member retirees from this Participating Group on or after October 1, 1981, then when he is receiving Normal or Early Retirement benefits under the Plan and is age 65 or over, an amount shall be added to the monthly retirement benefit otherwise payable to the Member for as long as he is entitled to a retirement benefit under the Plan equal to $5.50.

(l) Special Provision for Former Eau Claire Employees: Any Member of this Participating Group who was on the payroll at the Company's Eau Claire, Wisconsin Plant on July 10, 1984 and was covered under

Supplement Two of this Plan at that time shall be treated as having been covered by this Supplement for all service earned under the Plan providing that the member applied for and was accepted as an employee at the Lake City, Minnesota plant prior to the expiration of his union recall rights at Eau Claire. Any benefit payable under the provisions of this paragraph shall be reduced, but to not less than zero, by the benefit payable under Supplement 2 of this Plan. In addition, no Member of this Participating Group shall receive credit under this Plan for more than one year of Benefit Service for the calendar year 1984.

This Supplement One amends and replaces the original Supplement One of the Plan, effective October 1, 1984.

IN WITNESS WHEREOF, the undersigned committee has caused this amendment to be executed on behalf of the Company on this____day of_____, 198__.

IMPERIAL CLEVITE PENSION
AND WELFARE PLAN COMMITTEE
By_____S/S_____
Its_____

SUPPLEMENT TWO
of the
IMPERIAL CLEVITE INC. HOURLY RETIREMENT PLAN

Imperial Clevite Inc. Participating Group No._____shall be covered by the Imperial Clevite Inc. Hourly Retirement Plan in accordance with the provisions of the Plan and on the following basis:

(a) Name of Participating Group: Participating Group No._____.

(b) Group of Employees: All Employees of the Company on and after the Effective Date of Coverage who are Located at the Eau Claire, Wisconsin plant and who are represented by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 102 (the "Union").

(c) Effective Date of Coverage: Effective Date of the Plan.

(d) Normal Retirement Benefit Under Subsection 4.1(b) of the Plan: A Member's monthly normal retirement benefit shall be equal to the benefit rate in effect at his termination of employment multiplied by his years of Benefit Service. On September 9, 1964, the benefit rate in effect was $2.00. Effective as of the following dates the benefit rate has been amended as shown below:

9-09-68	$ 2.50
9-09-70	3.00
9-09-71	3.50

9-09-72	4.00
9-09-73	4.75
9-09-74	5.50
9-09-75	6.00
9-09-76	6.75
9-10-77	7.25
9-10-78	8.00
9-30-79	8.50
9-08-80	9.00
8-31-81	9.75
8-30-82	10.25
8-29-83	11.00

(e) Maximum Benefit Service: Under subsection 3.6(c) of one Plan, there shall be no maximum benefit service for this participating group (prior to September 10, 1977, the maximum was 33 years).

(f) Disability Retirement Benefit: A Member who has attained age 40 and has ten or more years of Benefit Service who incurs a Disability shall be entitled to a Disability retirement benefit beginning on the first of the month following the incurrence of his Disability and continuing until he is no longer disabled. The monthly amount of the Disability retirement benefit shall be equal to the benefit rate in effect at the time of his disablement multiplied by his years of Benefit Service at the time of his disablement. "Disability" means physical or mental disability expected to result in death or to be of long continued duration which renders the Employee unable to engage in any employment or occupation for remuneration or profit for which he is reasonably qualified by reason of his training, education or experience; provided, however, the "Disability" shall not include a disability arising by

virtue of chronic alcoholism, drug addiction, injuries sustained during engagement in a felonious enterprise, or self-inflicted wounds, other than accidental ones. The existence of such "Disability" shall be established by the certificate of a medical doctor satisfactory to the Committee. If no such certificate is furnished, when requested, the "Disability" shall be deemed to have ceased.

(g) Pre-Retirement Surviving Spouse Benefit: If a member dies prior to the termination of his employment after having attained age 55 and completed ten years of Vesting Service, Subsection 4.4 of the Plan shall not apply. In lieu thereof, the surviving spouse of such Member shall be entitled to a monthly surviving spouse benefit equal to 50% of the Member's accrued benefit at the time of his death beginning with the first day of the month following the Member's death and ending with the first day of the month in which the surviving spouse dies. Such surviving spouse benefit shall be reduced by 1% for each year, if any, by which the spouse's date of birth is more than five years subsequent to that of the Member (but not in excess of 10%).

(h) Optional Post-retirement Surviving Spouse Benefits: In lieu of the monthly retirement benefit otherwise payable under subsection 4.1 or 4.2 of the Plan or under paragraph (g) of this supplement, a Member may elect (which election shall include the rejection of the automatic post-retirement surviving spouse benefit under subsection 4.5 of the Plan), on a form furnished by and filed with the Committee prior to the effective date of the election, to receive a reduced monthly retirement benefit. This benefit shall be

payable to him with the provision that if his spouse (to whom he is married at least one year on the effective date of the election) shall be living at the effective date of the election and also at his death after such election becomes effective, a surviving spouse benefit shall be payable to his spouse. Such election is subject to the following conditions:

(1) The election shall have an effective date of the member's Normal or Early Retirement Date, or the date Disability benefits begin. unless Disability benefits begin before the Member's 55th birthday, in which case the effective date shall be the first day of the month following his 55th birthday, provided Disability benefits are still payable on such date.

(2) A Member may rescind the election by written notice to the Committee prior to the effective date of the election. The election shall be cancelled automatically if the Member dies before the effective date of such election, or if his spouse dies or ceases to be his spouse before such effective date.

The reduced monthly retirement benefit payable to the Member shall be the benefit otherwise payable, reduced to the percentage thereof that is applicable to him pursuant to the following formula:

90% plus .5% for each full year (if any) that his spouse's date of birth is before the Member's date of birth (up to a maximum of 100%) and minus .5% for each full year (if any) that his

spouse's date of birth is after the Member's date of birth.

The monthly benefit payable to the surviving spouse, if the Member's death occurs on or after the effective date of his election, shall be 50% of the reduced amount of such Member's monthly retirement benefit as determined in the preceding paragraph. For a Member entitled to an early retirement benefit who dies before such benefit begins, the reduced amount of his benefit shall be determined as if such benefit were to begin on the first of the month after the month in which he dies. Such benefit shall be payable on the first of each month during which such spouse is living after the month in which such death of the member occurs.

(i) Early Retirement Reductions: The following provision shall replace subsection 4.2(b) of the Plan for this Participating Group (Effective 9-10-78):

A Member's monthly early retirement benefit shall be an amount computed in the same manner as a normal retirement benefit based upon his Benefit Service and the provisions of the Plan in effect on his Early Retirement Date, reduced by .2% for each complete calendar month, up to a maximum of 60 months, by which his first early retirement benefit payment precedes the first day of the month next following his 65th birthday, and also reduce.d by .4% for each complete calendar month by which his first early retirement benefit payment precedes the first day of the month next following his 60th birthday.

* * * * * * *

Executed this _____ day of _____, 1981.

IMPERIAL CLEVITE INC.

By_____

Its_____President

AMENDED
SUPPLEMENT TWO
of the
IMPERIAL CLEVITE INC. HOURLY RETIREMENT PLAN

Participating Group No. 2 shall be covered by the Imperial Clevite Inc. Hourly Retirement Plan in accordance with the provisions of the Plan and on the following basis:

(a) Name of Participating Group: Participating Group No. 2.

(b) Group of Employees: All Employees of the Company on and after the Effective Date of Coverage who are located at the Eau Claire, Wisconsin plant and who are represented by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 102 (the "Union").

(c) Effective Date of Coverage: September 28, 1981. (Coverage under Predecessor Gould Plan effective September 9, 1964).

(d) Normal Retirement Benefit Under Subsection 4.1(b) of the Plan: A Member's monthly normal retirement benefit shall be equal to the benefit rate in effect at his termination of employment multiplied by his years of Benefit Service. On September 9, 1964, the benefit rate in effect was $2.00. Effective as of the following dates the benefit rate has been amended as shown below:

9-09-68	$ 2.50
9-09-70	3.00

9-09-71	3.50
9-09-72	4.00
9-09-73	4.75
9-09-74	5.50
9-09-75	6.00
9-09-76	6.75
9-10-77	7.25
9-10-78	8.00
9-30-79	8.50
9-08-80	9.00
8-31-81	9.75
8-30-82	10.25
8-29-83	11.00

For Members who retire after August 30, 1981 but before September 9, 1984,

(1) any retirement benefits due for months beginning on or after August 30, 1982 but before August 29, 1983 shall be based on a $10.25 benefit rate; and

(2) any retirement benefits due for months beginning on or after August 29, 1983 shall be based on an $11.00 benefit rate.

(e) Maximum Benefit Service: Under subsection 3.6(c) of the Plan, there shall be no maximum benefit service for this Participating Group (prior to September 10, 1977, the maximum was 35 years).

(f) Disability Retirement Benefit: A member who has attained age 40 and has ten or more years of Benefit Service who incurs a Disability shall be entitled to a Disability retirement benefit beginning on the first of

the month following the incurrence of his Disability and continuing until he is no longer disabled. The monthly amount of the Disability retirement benefit shall be equal to the benefit rate in effect at the time of his disablement multiplied by his years of Benefit Service at the time of his disablement. "Disability" means physical or mental disability expected to result in death or to be of long continued duration which renders the Employee unable to engage in any employment or occupation for remuneration or profit for which he is reasonably qualified by reason of his training, education or experience; provided, however, that "Disability" shall not include a disability arising by virtue of chronic alcoholism, drug addiction, injuries sustained during engagement in a felonious enterprise, or self-inflicted wounds, other than accidental ones. The existence of such "Disability" shall be established by the certificate of a medical doctor satisfactory to the Committee. If no such certificate is furnished, when requested, the "Disability" shall be deemed to have ceased.

(g) Pre-Retirement Surviving Spouse Benefit: if a Member dies prior to the termination of his employment after having attained age 55 and completed ten years of Vesting Service, Subsection 4.4 of the Plan shall not apply. In lieu thereof, the surviving spouse of such Member shall be entitled to a monthly surviving spouse benefit equal to 50% of the Member's accrued benefit at the time of his death beginning with the first day of the month following the Member's death and ending with the first day of the month in which the surviving spouse dies. Such surviving spouse benefit shall be reduced by 1% for each year, if any, by which the spouse's date of birth

is more than five years subsequent to that of the Member (but not in excess of 10%).

(h) Optional Post-retirement Surviving Spouse Benefits: In lieu of the monthly retirement benefit otherwise payable under subsection 4.1 or 4.2 of the Plan or under paragraph (g) of this supplement, a Member may elect (which election shall include the rejection of the automatic post-retirement surviving spouse benefit under subsection 4.5 of the Plan), on a form furnished by and filed with the Committee prior to the effective date of the election, to receive a reduced monthly retirement benefit. This benefit shall be payable to him with the provision that if his spouse (to whom he is married at least one year on the effective date of the election) shall be living at the effective date of the election and also at his death after such election becomes effective, a surviving spouse benefit shall be payable to his spouse. Such election is subject to the following conditions:

(1) The election shall have an effective date of the Member's Normal or Early Retirement Date, or the date Disability benefits begin, unless Disability benefits begin before the Member's 55th birthday, in which case the effective date shall be the first day of the month following his 55th birthday, provided Disability benefits are still payable on such date.

(2) A member may rescind the election by written notice to the Committee prior to the effective date of the election. The election shall be cancelled automatically if the Member dies before the effective date of such election, or if

his spouse dies or ceases to be his spouse before such effective date.

The reduced monthly retirement benefit payable to the member shall be the benefit otherwise payable, reduced to the percentage thereof that is applicable to him pursuant to the following formula:

90% plus .5% for each full year (if any) that his spouse's date of birth is before the Member's date of birth (up to a maximum of 100%) and minus .5% for each full year (if any) that his spouse's date of birth is after the Member's date of birth.

The monthly benefit payable to the surviving spouse, if the Member's death occurs on or after the effective date of his election, shall be 50% of the reduced amount of such Member's monthly retirement benefit as determined in the preceding paragraph. For a Member entitled to an early retirement benefit who dies before such benefit begins, the reduced amount of his benefit shall be determined as if such benefit were to begin an the first of the month after the month in which he dies. Such benefit shall be payable on the first of each month during which such spouse is living after the month in which such death of the Member occurs.

(i) Early Retirement Reductions: The following provision shall replace subsection 4.2(b) of the Plan for this Participating Group (effective 9-10-78):

A Member's monthly early retirement benefit shall be an amount computed in the same manner

as a normal retirement benefit based upon his Benefit Service and the provisions of the Plan in effect on his Early Retirement Date, reduced by .2% for each complete calendar month, up to a maximum of 60 months, by which his first early retirement benefit payment precedes the first day of the month next following his 65th birthday, and also reduced by .4% for each complete calendar month by which his first early retirement benefit payment precedes the first day of the month next following his 60th birthday.

(j) Early Retirement Benefits; Eligibility: Any Member of this Participating Group on the active payroll as of July 10, 1984 who attains his Early Retirement Age by July 10, 1985 shall be eligible to receive an early retirement benefit under the Plan commencing on or after his Early Retirement Date.

(k) Vested Retirement Age: Subsection 2.1(s)(3) will apply to any Member of this Participating Group on the active payroll as of July 10, 1984 who is subsequently placed on layoff status or terminates employment with the Company even though he may have completed less than ten years of Vesting Service.

(l) Benefit Service: Any Member of this Participating Group on the active payroll as of July 10, 1984 who is subsequently placed on layoff status, retires, or terminates employment with the Company will receive credit for a full year of Benefit Service for calendar year 1984 even though he did not complete the required Hours of Service in Subsection 3.6(b).

This Supplement Two amends and replaces the original Supplement Two of the Plan, effective July 10, 1984.

IN WITNESS WHEREOF, the undersigned committee has caused this amendment to be executed on behalf of the Company on this_____day of_____, 198___.

IMPERIAL CLEVITE PENSION
AND WELFARE PLAN COMMITTEE

By_____S/S_____
Its_____

FIRST AMENDMENT
OF
IMPERIAL CLEVITE INC. HOURLY RETIREMENT PLAN

WHEREAS, IMPERIAL CLEVITE, INC. (the "Company") maintains IMPERIAL CLEVITE INC. HOURLY RETIREMENT PLAN (the "Plan"); and

WHEREAS, amendment of the Plan is now considered desirable;

NOW, THEREFORE, pursuant to the power reserved to the Company by subsection 9.1 of the Plan, and pursuant to the authority delegated by the Company's board of directors to the Imperial Clevite Pension and Welfare Plan Committee (the "Committee"), the Committee hereby amends the Plan in the following particulars:

1. By substituting the following for subparagraph 2.1(b) of the Plan:

"(b) 'Actuarial Equivalent' means a benefit having the same value as the benefit it replaces, based on the following interest rates and mortality tables:

(1) For determining the lump sum Actuarial Equivalent of a benefit:

(i) Interest Rate: the rate used by the Pension Benefit Guaranty Corporation for valuing annuities for the month of January in the Plan Year which includes the date of determination.

(ii) Mortality Table. UP 1984 Table.

(2) For determining the Actuarial Equivalent for any other purpose under the Plan:

(i) Interest Rate. 7% per annum.

(ii) Mortality table. UP 1984 Table."

2. By adding the following new sentence after the sentence in subparagraph 2.1(s)(1) of the Plan:

"A Member's right to his normal retirement benefit shall be nonforfeitable on and after his Normal Retirement Age."

3. By adding the following new sentence after the sentence in subparagraph 4.1(b) of the Plan:

"The amount of a Member's monthly normal retirement benefit shall be actuarially increased to reflect the aggregate amount of monthly normal retirement benefit payments which were not paid to such Member for those calendar months (if any) beginning on or after his Normal Retirement Age during which he completed less than 40 Hours of Service."

4. By substituting the following for subsection 4.8 of the Plan:

"4.8 Maximum Annual Benefits. Notwithstanding any other provisions of this plan to the contrary, the annual benefit provided under this defined benefit plan from Employer contributions for any Member shall in no event exceed the lesser of (a) or (b) below:

(a) $90,000, or the larger Actuarial Equivalent for an annual benefit commencing after age 65, or the smaller Actuarial Equivalent for an annual benefit commencing before age 62, provided that such equivalent shall not be reduced below

(i) $75,000 if payment of the benefit begins at or after age 55; or

(ii) an amount which is an Actuarial Equivalent to a benefit of $75,000 commencing at age 55 if payment of the benefit begins before age 55; or

(b) an amount equal to 100% of the Annual average of the highest three consecutive calendar years of compensation paid to the Member by the Employer during his active participation in the Plan.

Beginning in 1988, as of January 1 of each year, the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year to reflect increases in the cost of living shall become effective as the dollar amounts in (a) above for the Plan Year ending within that calendar year. Any increase in the maximum benefit under this clause small apply to all benefits payable with respect to former as well as present Members. If a member has less than 10 years of benefit service, the limits stated above as applied to the member, shall be reduced to a fraction thereof that his number of such years bears to 10. If a Member in this Plan also is a participant in a defined contribution plan of the Employer, the aggregate benefits payable to, or an account of, him under both plans will be determined in a manner consistent with Section 415 of the Internal Revenue Code of 1954 and Section 235 of the Tax Equity and Fiscal Responsibility Act of 1982. Accordingly, there will be determined with respect to the Member a defined

benefit plan fraction and a defined contribution plan fraction in accordance with said Sections 415 and 235. The benefits provided for the Member under this Plan will be adjusted to the extent necessary so that the sum of such fractions determined with respect to the member does not exceed 1.0."

Particular 3 above shall be effective as of January 1, 1982; particular 4 above shall be effective as of January 1, 1983; and particulars 1 and 2 shall be effective as of January 1, 1984.

IN WITNESS WHEREOF, the Undersigned Committee has caused this amendment to be executed on behalf of the Company on this 21st day of December, 1984.

IMPERIAL CLEVITE PENSION AND
WELFARE PLAN COMMITTEE

By S/S

Its VW Human Resources

SECOND AMENDMENT
OF
IMPERIAL CLEVITE INC. HOURLY RETIREMENT PLAN

WHEREAS, Imperial Clevite, Inc. (the "Company") maintains Imperial Clevite Inc. Hourly Retirement Plan (the "plan"); and

WHEREAS, amendment of the plan is now considered desirable;

NOW, THEREFORE, pursuant to the power reserved to the company by subsection 9.1 of the plan and pursuant to the authority delegated by the Company's Board of Directors to the Imperial Clevite Pension and Welfare Plan Committee (the "committee"), the committee hereby amends the plan in the following particulars:

1. By substituting the following for subparagraph 2.1(b) of the plan:

"(b) 'Actuarial Equivalent' means a benefit having the same value as the benefit it replaces, based on the following:

(1) For determining the lump sum Actuarial Equivalent of a benefit use the following assumptions:

(i) Interest Rate: the rate used by the Pension Benefit Guaranty Corporation for valuing immediate annuities for the month of January in the Plan Year which includes the date of determination.

(ii) Mortality Table UP 1984 Table

(2) For determining the contingent annuitant option Actuarial Equivalent of a benefit

Adjust the applicable base factor as follows for each full year that Member's age is:

Option	Base Factor	Less than 65	More than 65	Less than Contingent Annuitant's Age	More than Contingent Annuitant's Age
50%	900	+ 0030	- 0030	+ 0050	- 0050
66 2/3%	870	+ 0044	- 0044	+ 0058	- 0058

Maximum factor = 1 000

(3) For determining the certain and life annuity option Actuarial Equivalent of a benefit

Adjust the applicable base factor as follows for each full year that Member's age is:

Option	Base Factor	Less than 65	More than 65
10 years	920	+ 0060	- 0060

To determine the benefit amount payable under two or three above, the base factors, as adjusted, shall be multiplied by the benefit payable on a life only annuity basis.

(4) For determining the Actuarial Equivalent for any other purpose under the Plan:

(i) Interest Rate: 7% per annum.

(ii) Mortality table: UP 1984 Table.

2. By adding the following new Section 13 at the end of the plan.

"SECTION 13
Compliance with 1984 Laws

13.1. Purpose of Section. This Section 13 has been added to the plan so that the plan will contain provisions that comply with the Tax Reform Act of 1984 and the Retirement Equity Act of 1984. If the term 'participant,' with or without initial capitalization, is used elsewhere in the plan to denote a person who is participating in the plan, the term 'member' as used in this Section 13 is intended to have the same meaning as the term participant. To the extent that there is any inconsistency or conflict between any provisions of this Section and any other provisions of the plan, it is intended that the provisions of this Section shall control.

13.2. Maternity and Paternity Absences. In the case of a maternity or paternity absence (as defined below), an employee will not be considered to have incurred a one-year break in service until the end of the twelve consecutive-month period next following the twelve consecutive-month period commencing on the first day of such absence provided the employee has not returned to active employment with the Company prior to the completion of such 24-month period. A 'maternity or paternity absence' means an employee's absence from work because of the pregnancy of the employee or birth of a child of the employee, the placement of a child with the employee in connection with the adoption of such child by the employee, or for purposes of caring for the child immediately

following such birth or placement. The company may require the employee to furnish such information as the company considers necessary to establish that the employee's absence was for one of the reasons specified above.

13.3. Reemployed Employees. Any provision contained elsewhere in the plan that would result in the prior eligibility, vesting or benefit service of a former employee being disregarded for plan purposes in the event of reemployment of such former employee shall be applicable to the reemployed employee only if:

(a) the former employee is reemployed after having incurred five consecutive one-year breaks in service, and

(b) the former employee's number of consecutive one-year breaks in service equals or exceeds his number of years of vesting service for which he had been credited during his previous employment with the Company.

A 'one-year break in service' means the 12 consecutive-month period commencing on the day next following an employee's Termination of Service and each successive 12-month period during which a former employee continues not to be employed by the Company.

13.4. Form of Payment of Retirement Benefits. If a Member is married at the time payment of his retirement benefits is to commence, such benefits will be payable in a joint and survivor form in an amount that is actuarially equivalent to payment of his retirement benefits in a life only form. The joint and survivor form of payment shall provide for monthly payments to the Member for his lifetime and if he

is survived by the person who was his spouse at the time payments commenced, a continuing monthly payment will be made to the spouse for the balance of her lifetime in an amount equal to 50 percent of the monthly amount that was payable to the Member while living. If the Member's retirement benefit is payable in the form described above, such payment will be in lieu of any other form of payment that might otherwise be payable under the provisions of the plan. If a member does not wish to have his retirement benefit paid in the joint and survivor form described above, he may elect not to have his retirement benefit paid in this form which election must be made during the 90-day period immediately preceding commencement of payment of his retirement benefit and must be consented to by the Member's spouse.

13.5. Spouse Pre-Retirement Death Benefit. If a member who has become eligible to receive a retirement benefit dies before payment of such benefit commences and the Member is survived by a spouse, there shall be payable to such spouse a 50 percent survivorship benefit such as is described in subsection 13.4. The amount of such death benefit shall be based on the Member's accrued benefit as of the date of death and will be payable to the surviving spouse monthly commencing with the first month next following the month in which the Member died or, if later, the month next following the month in which the Member would have attained age 55 years. If a death benefit becomes payable under this subsection, such benefit will be in lieu of any other form of benefit that might be payable under the plan following the death of a Member except that if any other such form of death benefit would exceed in value the death benefit payable under this subsection, such other death benefit will be paid to the extent that it exceeds the value of the death benefit payable under this Subsection.

13.6. Member's Elections. Subject to subsection 13.7, a Member may make the following elections:

(a) An election that the Member does not want his retirement benefit paid in the joint and survivor form described in subsection 13.4.

(b) An election that, in the event of the Member's death, the spouse's pre-retirement death benefit described in subsection 13.5 is not to be paid.

(c) An election cancelling any election previously made under (a) above.

Any election made under (a) or (b) above may be made at any time during the 90-day period immediately preceding the day that payment of a Member's retirement benefit is to commence, and an election under (b) above may be made at any time on or after the first day of the plan year in which the Member attains age 35 years and before the member's death. An election under (c) above may be made at any time before payment of his retirement benefit commences or the member's death.

13.7. Spouse Consent. If a Member has a spouse at the time an election is being made under paragraph 13.6(a) or (b) or if the Member acquires a spouse after making such an election, the spouse's consent to the election must be furnished to the company in order for the election to be valid. Such consent must be in writing and must acknowledge the effect of the election. The consent must be signed by the spouse and witnessed by a notary public. No such consent will be required if the Member does not have a spouse. If the spouse furnishing such consent subsequently ceases to be the Member's spouse and the Member subsequently acquires

another spouse, the consent of the new spouse will be required in order for any such election by the Member to be valid.

13.8 Written Explanations. Within a reasonable period of time before a member's retirement benefit is to commence, the company shall provide the Member with a written explanation of:

(a) the terms and conditions of the joint and survivor form of payment described in subsection 13.4;

(b) the Member's right to make, and the effect of, an election under paragraph 13.6(a);

(c) the rights of the Member's spouse under subsection 13.7;

(d) the Member's right to make and the effect of an election under paragraph 13.7(b).

In addition to the written explanation described above, a written explanation providing substantially the same information shall be furnished by the Company to a Member within the later of the following periods:

(1) A period commencing on the first day of the plan year in which the Member attains age 32 and ending on the last day of the plan year in which the Member attains age 34, or

(2) The three-year period commencing on the first day of the plan year in which the Member first became a Member in the plan.

13.9 Domestic Relations Orders. Any provision in the plan that restricts or prohibits the assignment, transfer, pledging or other alienation of a Member's retirement benefit shall not restrict or prohibit the Company from giving effect to a domestic relations order which directs payment of any part or all of a Member's retirement benefit to an alternate payee provided that the Company determines that such order is a 'qualified domestic relations order' within the meaning of Section 414(p) of the Internal Revenue Code.

13.10 Five Percent Owners. If for any reason payment of a Member's retirement benefit has not commenced when he reaches age 70-1/2 years, payment of such benefit shall commence no later than the April 1 next following the calendar year in which the Member reached such age provided the Member is then living and provided the Member owned five percent or more of the Company in the calendar year in which he reached age 70-1/2 years."

.13.11 Charge for Death Benefit. Any retirement benefit that a Member becomes entitled to under the plan, including any survivorship or death benefits that are payable after the death of a Member, will be reduced by 0.04167 percent thereof for each month during which the Member has the benefit of the pre-retirement death benefit coverage provided by subsection 13.5. For purposes of determining the amount of reduction in a Member's retirement benefits, the months for which the Member will be deemed to have the benefit of such death benefit coverage will be the months in the period commencing with the month in which a Member first becomes eligible for a retirement benefit under the plan or, if later, the first day of the plan year in which the Member reaches age 35 years and ending with the month in which the first of the following occurs:

(a) The month in which the Member dies,

(b) The month next preceding the month in which payment of the Member's retirement benefit commences, or

(c) The month in which the Member elects not to have the benefit of such death benefit coverage apply to him provided that the member's spouse has consented to such election.

No reduction in a Member's retirement benefit shall be made for any months occurring prior to January 1, 1985 except to the extent a similar reduction was imposed under other provisions of the plan to the member's benefits for any such months on account of a similar death benefit coverage provided by the plan. Further, if a Member's retirement benefit was not so reduced for any months prior to January 1, 1985, no such reduction will be made on account of any month in the year 1985, if the Member makes an election under paragraph 13.6(b) on or before January 1, 1986 not to have the death benefit protection apply to the Member and the Member's spouse consents thereto as provided in subsection 13.7.

The foregoing amendment shall be effective as of January 1, 1985.

IN WITNESS WHEREOF, the undersigned committee has caused this amendment to be executed on behalf of the Company on this 31st day of October, 1985.

IMPERIAL CLEVITE PENSION
AND WELFARE COMMITTEE

By S/S

Its Secretary

THIRD AMENDMENT
OF
IMPERIAL CLEVITE INC. HOURLY RETIREMENT PLAN

WHEREAS, Clevite Industries Inc (the "Company") maintains Imperial Clevite Inc. Hourly Retirement Plan (the "Plan"); and

WHEREAS, the Plan previously has been amended and further amendment thereof now is considered desirable;

NOW, THEREFORE, by virtue and in exercise of the power reserved to the Company by subsection 9.1 of the Plan and pursuant to the authority delegated by the Company's Board of Directors to the Clevite Industries Inc Benefit Plan Committee (the "Committee"), the Committee hereby amends the Plan in the following particulars:

1. By changing the name of the Plan from "Imperial Clevite Inc. Hourly Retirement Plan" to "Clevite Industries Inc Hourly Retirement Plan."

2. By substituting the following for subsection 1.1 of the Plan:

"1.1. The Plan. Clevite Industries Inc (previously known as Imperial Clevite Inc., and hereinafter referred to as the 'Company') maintains Clevite Industries Inc Hourly Retirement Plan (previously known as Imperial Clevite Inc. Hourly Retirement Plan, and hereinafter referred to as the 'Plan') for its eligible employees. The Plan was adopted effective September 28, 1981. The Plan is a continuation of and successor to the Gould Inc. Pension Plan (hereinafter referred to as the 'Predecessor Gould Plan') maintained

by Gould Inc. (hereinafter referred to as 'Gould'), as that plan applied to former Industrial Group employees prior to September 28, 1981."

3. By substituting the following for subparagraph 2.1(b)(1)(i) of the Plan:

"(i) Interest Rate: the rates used by the Pension Benefit Guaranty Corporation for valuing immediate and deferred annuities for the month of January in the Plan Year which includes the date of determination."

4. By substituting the following for subsection 2.1(e) of the Plan:

"(e) 'Committee' means the Clevite Industries Inc Benefit Plan Committee appointed by the Company to administer the Plan as described in subsection 7.1 hereof."

5. By adding the following new subparagraph 3.5(f) to the Plan immediately after subparagraph 3.5(e) thereof:

"(f) Notwithstanding any other provisions of the Plan to the contrary, an Employee who is transferred to employment with J. P. Industries, Inc. or any member of the controlled group of corporations of which J. P. Industries, Inc. is a member ('J.P.I.') pursuant to the sale of the assets of the Company's Engine Parts Division and who, at the time of transfer, had not completed ten Years of Vesting Service or attained Normal Retirement Age shall receive credit for Vesting Service for each full year and fraction of a year

(to the nearest one-twelfth of a year) in which he is employed by J.P.I., in accordance with the foregoing rules generally applicable to Vesting Service with an Employer. Such an individual's Termination of Vesting Service will be the date the individual terminates employment with J.P.I. Employment with J.P.I. will not be taken into account for purposes of determining Benefit Service or, except as provided above, for any other purposes under the Plan and thus, if an Employee described above completes ten Years of Vesting Service, the type and amount of benefit he will be entitled to shall be the type and amount of benefit he otherwise would have been entitled to at the time of transfer if he then had completed ten years of Vesting Service. A transferred Employee who had completed ten years of Vesting Service or attained Normal Retirement Age prior to the time of transfer shall be entitled to the same type and amount of benefit he was entitled to at the time of transfer."

6. By substituting the following for subsections 4.4 and 4.5 of the Plan:

"4.4. Pre-Retirement Spouse's Benefit. A benefit shall be payable to the spouse of a Member who dies after August 22, 1984 and who had completed at least one hour of service after that date, subject to and determined in accordance with the terms and conditions prescribed under this subsection 4.4. In the case of a Member of a Participating Group to whom Pre-Retirement Surviving Spouse Benefit coverage is otherwise extended under a Supplement to this Plan, the provisions of this subsection 4.4 shall be applicable, except to the extent the provisions

of such Supplement conflict with the provisions of this subsection 4 4 or provide a greater benefit than otherwise would be provided hereunder.

(a) Eligibility. A monthly spouse's benefit shall be payable on behalf of a member who, at the date of his death

(i) was married and had been married to the same spouse for the one-year period ending on that date;

(ii) had either attained age 65 years or completed 10 or more years of Vesting Service, and

(iii) had not begun to receive benefits under the Plan.

(b) Reduction of Retirement Benefits. The monthly retirement benefit payable to a Member at his retirement (and accordingly under subsection 4.5 hereof, if applicable shall be reduced by the sum of (i) the 'Reduction Percentage,' if any, applicable to such Member's retirement benefits as of August 31, 1984 in accordance with the provisions of subparagraph 4.4(c)(1) of the Plan as in effect on that date, and (ii) .04167% multiplied by the number of complete months after August 31, 1984 in which Pre-Retirement Spouse's Benefit coverage is in effect; except that months prior to the end of the applicable notice period (as defined in (h) below), and months after which the Member becomes eligible for pre-retirement spouse's benefit coverage at

no charge pursuant to a collective bargaining agreement, shall not be counted.

(c) Amount. The Pre-Retirement Spouse's Benefit shall be in an amount determined as follows:

(i) If the Member had attained age 65 years by the date of his death, 50% of the amount of the reduced monthly normal retirement benefit, computed pursuant to subparagraph 4.5(b), to which the Member would have been entitled if the first day of the month coincident with or next following the date of his death were his Normal Retirement Date and his benefits were payable in the form specified in subparagraph 4.5(b) of the Plan.

(ii) If the Member had met the requirements of subparagraph 4.2(a) by the date of his death (or earlier retirement), 50% of the amount of the reduced monthly early retirement benefit, computed pursuant to subparagraph 4.2(b), to which the Member would have been entitled if the first day of the month coincident with or next following the date of his death were his Early Retirement Date and his benefits were then payable in the form specified in subparagraph 4.5(b) of the Plan.

(iii) If the Member had not met the requirements of subparagraph 4.2(a) by the date of his death (or earlier termination of employment), 50% of the amount of the reduced monthly deferred vested retirement

benefit, computed pursuant to subparagraph 4.3(b), to which the Member would have been entitled if he had terminated employment on the date of his death and his benefits were payable in the form specified in subparagraph 4.5(a) of the plan commencing an the first day of the month coincident with or next following his 55th birthday (or his date of death, if later).

(d) Commencement and Duration. The monthly Pre-Retirement Spouse's Benefit shall be payable to the Member's spouse for life, commencing as of the first day of the month coincident with or next following the later of the date of the member's death or the date the Member would have attained age 55 years, and shall end with the month in which the Member's spouse dies.

(e) Waiver of Coverage. A Member shall be entitled to make an election not to maintain coverage hereunder at any time during the election period described in subparagraph (g) below. To be effective any such election shall require the consent of the Member's spouse in a manner prescribed under subparagraph 4.5(c). Any such election may be revoked by the Member within the election period.

(f) Duration of Coverage. Once in effect, coverage under this subsection 4.4 shall remain in effect until the earliest of:

(i) the date the Member is divorced from his spouse;

(ii) the Member's spouse dies;

(iii) the Member's benefit commencement date, or

(iv) the date the Member effectively elects not to have such coverage apply to him.

In the event coverage terminates pursuant to subsections (i), (ii) or (iii), such coverage automatically shall resume on the date the Member has been remarried for one year, or the Member's benefits are suspended by reason of reemployment, as the case may be, unless the Member otherwise effectively elects.

(g) Election Period. The election period shall commence on the first day of the Plan Year in which the Member attains age 35 and end on the earlier of: (i) the date of the Member's death or (ii) his benefit commencement date; provided that, in the case of a Member who terminates employment prior to attaining age 35 but after completing ten years of Vesting Service, the election period shall commence on the date of his termination of employment with respect to his accrued benefits as of such date.

(h) Notice of Terms and Conditions. Within the applicable notice period (as defined below), the Committee shall furnish each Member with a general written explanation of the terms and conditions of the Pre-Retirement Spouse's Benefit, the Member's right to make and the

effect of an election to waive Pre-Retirement Survivor Benefit coverage, the rights of the Member's spouse, the Member's right to revoke an election to waive the Pre-retirement Spouse's Benefit and the effect of such a revocation. For purposes of the preceding sentence, the term 'applicable notice period' means, with respect to any Member, whichever of the following periods ends last:

(i) the period beginning with the first day of the Plan Year in which the Member attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which he attains age 35;

(ii) a reasonable period after the individual becomes a Member; and

(iii) a reasonable period after the Member's termination of employment with the Employers, in the case of a Member who terminates employment before attaining age 35

4.5. Post-Retirement Joint and Survivor Annuity Benefits.

(a) Eligibility. A Member who is legally married on his benefit commencement date and who had not made an election in accordance with subparagraph (c) below shall receive such benefits in the form of a joint and survivor annuity.

(b) Amount and Duration. Such joint and survivor annuity shall (i) be Actuarially Equivalent to the amount of monthly retirement benefits otherwise payable to the Member in accordance with the Plan on a life annuity basis, and (ii) consist of a reduced monthly retirement benefit continuing during the Member's lifetime, and if the Member's spouse is living at the date of the Member's death, payment of one-half of such reduced monthly retirement benefit to such spouse until the spouse's death occurs, with the last payment to be made for the month of the death of the last to die of the Member and his spouse.

(c) Election to Waive Joint and Survivor Annuity. A Member may make a written election to waive the joint and survivor annuity at any time during the 90-day period ending on the date payment of his benefits commences. Such an election will be effective only if the Member's spouse consents to the election in writing, and such consent acknowledges the effect of the waiver and is witnessed by a member of the Committee or a notary public. At least nine months prior to the earliest date on which a Member may begin to receive benefits under the Plan, the Committee shall furnish him with a written explanation of the terms and conditions of the joint and survivor annuity, the Member's right to make, and the effect of, an election to waive the joint and survivor annuity, the requirement of spousal consent to such a waiver; and the Member's right to make, and the effect of, a revocation of such a waiver. An election under this subparagraph

may be revoked by a Member at any time prior to the date payment of his benefits commences.

(d) Optional Post-Retirement Surviving Spouse Benefit Notwithstanding any provision therein to the contrary, the election by a Member of an Optional Post-Retirement Surviving Spouse Benefit in accordance with the provisions of any Supplement to this Plan shall not be effective unless the Member and the Member's spouse first waive the joint and survivor annuity coverage in accordance with subparagraph (c) above; except that, if such Optional Post-Retirement Surviving Spouse Benefit meets the requirements of a 'qualified joint and survivor annuity' (as defined in Section 417(b) of the Internal Revenue Code) and would result in a greater benefit being payable to the Member and the Surviving Spouse, then the foregoing shall not apply."

7. By deleting subsections 13.4 through 13.8 and 13.11 of the Plan, and redesignating subsections 13.9 and 13.10 of the Plan as subsections 13.4 and 13.5, respectively.

Particulars 3 and 5 through 7 above shall be effective as of January 1, 1987; and particulars 1, 2 and 4 above shall be effective as of July 3, 1986.

IN WITNESS WHEREOF, the undersigned Committee has caused this amendment to be executed on behalf of the Company, dated this 14th day of February, 1987.

CLEVITE INDUSTRIES INC
BENEFIT PLAN COMMITTEE

By S/S
Its Corp. Dir. Human Resources

FOURTH AMENDMENT
OF
CLEVITE INDUSTRIES INC HOURLY RETIREMENT PLAN

WHEREAS, The Pullman Company (the "Company") maintains the Clevite Industries Inc Hourly Retirement Plan (formerly known as the Imperial Clevite Inc. Hourly Retirement Plan and hereinafter referred to as the "Plan"); and

WHEREAS, the Plan has previously been amended and further amendment thereof is now considered desirable;

NOW, THEREFORE, pursuant to the power reserved to the Company by subsection 9.1 of the Plan, and pursuant to the authority delegated by the Company's Board of Directors to the Committee appointed by the Board to administer the Plan, the Committee hereby amends the Plan effective September 30, 1987 (except as otherwise set forth herein) as follows:

1. Subsection 1.1 of the Plan is hereby deleted in its entirety and the following provision is substituted in lieu thereof:

> "1.1 The Plan. The Pullman Company (successor to Clevite Industries Inc, formerly known as Imperial Clevite Inc., and hereinafter referred to as the 'Company') maintains the Clevite Industries Inc Hourly Retirement Plan (previously known as the Imperial Clevite Inc. Hourly Retirement Plan and hereinafter referred to as the 'Plan') for its eligible employees. The Plan was adopted effective September 28, 1981. The Plan is a continuation of and successor to the Gould Inc. Pension Plan (hereinafter referred to as the 'Predecessor

Gould Plan') maintained by Gould Inc. (hereinafter referred to as 'Gould'), as that plan applied to former Industrial Group employees prior to September 28, 1981."

2. Subsection 2.1(e) of the Plan is hereby deleted in its entirety and the following provision is substituted in lieu thereof:

"(e) 'Committee' means the committee appointed by the Board of Directors of the Company to administer the Plan as described in subsection 7.1 hereof."

3. Effective January 1, 1987, the Plan is amended by adding the following sentence at the end of subsection 2.1(n):

"Notwithstanding the above, no Employee shall become a Participant after February 17, 1987."

4. Effective January 1, 1987, subsection 2.1(s)(3) of the Plan is hereby deleted in its entirety and the following provision is substituted in lieu thereof:

"(3) 'Vested Retirement Age' means a Member's age when he has completed ten years of Vesting Service before his Early Retirement Age, except that a Member who is a member of a Participating Group on February 17, 1987, whose employment with the Company is terminated pursuant to the sale of the assets of the Company's Engine Parts Division to J. P. Industries, Inc., and who on February 17, 1987 has not completed ten years of Vesting Service shall be deemed to attain his Vested Retirement Age on February 17, 1987."

5. Effective January 1, 1988, subsection 2.1(w) of the Plan is hereby deleted in its entirety and the following provision is substituted in lieu thereof:

"(w) 'Trust Agreement' means the Master Trust Agreement between The Pullman Company and State Street Bank and Trust Company and such other agreement in the nature of a trust established to form a part of the Plan to receive, hold, invest, and dispose of any Trust Fund."

6. Effective January 1, 1987, the Plan is amended by adding the following sentence at the end of subsection 3.1:

"Notwithstanding the above, no Employee shall become a Participant after February 17, 1987."

7. Effective January 1, 1987, subsection 3.5(f) is hereby deleted in its entirety.

8. Effective January 1, 1985, subsection 4.9 of the Plan is hereby deleted in its entirety and the following provision is substituted in lieu thereof:

"4.9 Payment of Small Amounts. If the Actuarially Equivalent lump sum value of any retirement benefit otherwise payable under the Plan is less than $3,500, the Committee may direct that such lump sum value be paid in full discharge of all liability under the Plan."

9. Subsection 7.1 of the Plan is hereby deleted in its entirety and the following provision is substituted in lieu thereof:

"7.1 Committee. The Plan shall be administered by the Committee appointed by the Company. The Committee shall be composed of as many members as may be appointed from time to time, and shall hold office at the pleasure of the appointing authority. The Committee shall be the administrator of the plan and the Committee shall be a fiduciary under the Plan, as a named fiduciary in accordance with the Act."

IN WITNESS WHEREOF, the Committee has caused this amendment to be executed on behalf of the Company this 30th day of August, 1988.

By: S/S

S/S

S/S

S/S

Being all the members
of the Committee

PURCHASE AGREEMENT

Purchase Agreement (this "Agreement") dated as of January 13, 1987 between Clevite Industries Inc., a Delaware corporation ("Seller"), and JPI Acquisition, Inc., a Michigan corporation ("Buyer").

Seller desires to sell the Division (as hereinafter defined) and Buyer desires to purchase the Division.

Now, Therefore, in consideration of, and subject to, the respective representations, warranties, covenants and conditions herein contained, Seller and Buyer agree as follows:

1. Definitions.

As Used in this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" of a specified person shall mean a person that directly, or indirectly through one or more intermediaries controls or is controlled by or is under common control with the person specified.

"Assumed Liabilities" shall have the meaning set forth in Section 2(b) hereof.

"Closing Balance Sheet" shall mean the balance sheet of the Division as defined in Section 4 hereof.

"Closing Date" shall mean the date set forth in Section 3 hereof.

"Corporate Officer" shall mean the President or any Vice President of Clevite.

"Disclosure Schedule" means a disclosure schedule of even date herewith signed for identification by an officer of Seller and delivered to Buyer prior to the execution of this Agreement and as it shall be updated on the Closing Date.

"November 30, 1986 Balance Sheet" shall mean the balance sheet of the Division as of November 30, 1986 attached hereto as Exhibit A.

"Division" shall mean the Engine Parts Division of Seller which is engaged in the manufacture of camshaft bushings, transmission bushings, engine bearings, pistons and cylinder sleeves for use in automobiles, trucks, diesel locomotives and construction and agricultural equipment and the sale of such engine parts to both original equipment manufacturers and after market customers.

"Net Assets" shall mean the aggregate book value of the Purchased Assets less the aggregate book value of the Assumed Liabilities of the Division as shown on the respective columns bearing such headings on the Closing Balance Sheet.

"Purchased Assets" shall mean all of the properties and assets of Seller of every kind and description which form a part of the Division as of the Closing Date, including, without limitation, all properties, tangible or intangible, real, personal or mixed, securities and investments, furniture and fixtures, lease hold improvements, fixed assets, petty cash, receivables, conditional sale contracts and other title retention agreements, permits, approvals and qualifications of Federal, state and local governmental agencies, replacement and spare parts, vehicles, inventories and operating supplies, repair materials, tools, packaging materials, claims and rights of every kind, leases, contracts, prepayments, patents (including reissues, divisions, continuations, and extensions thereof), patent applications, patent disclosures docketed, copyrights, trademarks, trademark applications, trade names, processes, drawings, designs, technology, licenses, lists of customers and suppliers, sales and promotion literature, correspondence, trade association memberships, research and development records, financial, personnel and other books and records, owned or held by the Division, or owned or held by Seller and relating to the Division Business (including all such properties and assets reflected in the "Purchased Assets" column of the Closing Balance Sheet), except (i) prepayments made or accrued by Seller and/or the Division which relate to any of the assets of Seller which are not being

sold, conveyed, assigned, transferred and delivered to the Buyer hereunder, (ii) prepayments received or accrued by Seller and/or the Division which relate to any liabilities or obligations of Seller which are not being assumed by the Buyer hereunder, (iii) rights of Seller and its Affiliates in and to the name "Clevite" and trade names and trademarks including the name "Clevite" (except to the extent Buyer is authorized to use such names or trademarks under the terms of the Trademark License Agreement attached hereto as Exhibit E) and related names, logos, trademarks and trade names and other names, logos, trademarks and trade names which relate to businesses of the Seller and its Affiliates other than the Division, (iv) assets and properties (including without limitation financial, personnel and other books and records) owned or held by Seller or any Affiliate of Seller which are not reflected on the Closing Balance Sheet, do not form a part of the Division and are used in businesses of Seller and its Affiliates other than the Division, (v) rights and claims of Seller or any Affiliate of Seller which are not reflected as assets on the Closing Balance Sheet which may be asserted as a defense, cross-claim or counter claim in any action, suit or proceeding brought against Seller or any Affiliate of Seller, (vi) rights of Seller under this Purchase Agreement and the agreements and instruments delivered to Seller by the Buyer pursuant to this Purchase Agreement, and (vii) all property and assets reflected in the "Excluded Assets" column of the Closing Balance Sheet.

The term "relating to the Division Business," when used with respect to any asset or property owned or held by Seller is intended to designate those assets and properties which would in the normal course of events be expected to be owned or held by the Division if the Division were an independent, self-sufficient business entity.

"Purchase Price" shall have the meaning set forth in Section 2(a) hereof.

2. Subject Matter and Consideration for Sale.

Subject to the terms and conditions herein contained, Seller shall sell, convey, assign, transfer and deliver to Buyer on the Closing Date, and Buyer shall purchase, acquire and accept from Seller on such date the Purchased Assets. As consideration for the sale of the Purchased Assets,

(a) Buyer shall pay to Seller a purchase price (the "Purchase Price") equal to the Net Assets of the Division as of the Closing Date plus $4,000,000; and

(b) except for the liabilities and obligations referred to below, which Buyer is not assuming, Buyer shall assume, and pay, perform or discharge as they become due, (i) all purchase and sale orders and commitments for personal property or services of the Seller and/or the Division relating to the Division Business entered into in the ordinary course of business prior to the Closing Date; (ii) all liabilities and obligations of Seller and/or the Division under all leases, contracts and commitments relating to the Division Business to which Seller and/or the Division is a party; (iii) all liabilities and obligations of Seller and/or the Division reflected in the "Assumed Liabilities" column on the Closing Balance Sheet or the notes thereto; (iv) all liabilities and obligations of Seller and/or the Division relating to the Division Business arising out of any violation of any law, rule or regulation relating to safety, environmental protection or pollution control, including without limitation those Acts set forth in Section 5(h) hereof, except for those liabilities and obligations (A) specifically identified in the Disclosure Schedule as being retained by Seller or (B) arising out of any matters of which Seller was aware and failed to disclose to Buyer in accordance with the terms of this Agreement; (v) all liabilities and obligations of Seller and/or the Division arising

out of any claim proceeding, cause of action, grievance or arbitration involving any employee of the Division or any union representing any employee of the Division, except for those liabilities (A) specifically identified in the Disclosure Schedule as being retained by Seller or (B) arising out of any matters of which Seller was aware and failed to disclose to Buyer in accordance with the terms of this Agreement; and (vi) all liabilities and obligations for the self-insured portion of any claims or events which occurred prior to the Closing Date relating to the Division Business and for which Seller has insurance coverage under policies in force on or prior to the Closing Date (the "Assumed Liabilities"). Buyer shall not assume any of the following liabilities and obligations (collectively the "Excluded Liabilities"):

(A) Liabilities and obligations of the Seller or any Affiliate of the Seller relating to the Division Business existing on the Closing Date which are required to be reflected on the Closing Balance Sheet by generally accepted accounting principles but which are not reflected thereon and all liabilities reflected in the "Excluded Liabilities" column on the Closing Balance Sheet;

(B) Liabilities and obligations (other than those liabilities and obligations reflected on the Closing Balance Sheet) of Seller or any Affiliate of Seller with respect to (1) income taxes payable by or relating to the Division Business up to and including the Closing Date, or (2) any taxes calculated on net gain or income which are imposed or incurred in connection with the consummation of the transactions contemplated by this Agreement;

(C) Liabilities arising from claims, proceedings or causes of action resulting from property damage or personal injuries which occurred, and were caused by products sold by Seller, prior to the Closing Date and liabilities arising from or associated with the pending and threatened litigation and other matters set forth in the Disclosure Schedule, which are described therein as being retained by Seller; provided that Buyer shall cooperate with Seller in defending such claims, proceedings or causes of action and shall make available to Seller such personnel and records as Seller may reasonably request for such purpose, and Seller shall pay all out-of-pocket expenses incurred by Buyer in connection therewith;

(D) Liabilities and obligations of Seller or any Affiliate with respect to or arising out of any Employee Benefit Plans, Pension Plans or Welfare Plans (as defined in Section 5(k)(iv) hereof), or any incentive, pension, profit sharing, bonus, option group insurance, severance pay or retirement plan, agreement or arrangement, except to the extent expressly assumed by Buyer pursuant to and as provided in Section 21 hereof;

(E) Liabilities and obligations for medical, health and dental claims by employees of the Division with respect to services rendered before the Closing Date, and liabilities and obligations arising under or relating to any workers' compensation laws with respect to injuries sustained by any employee prior to the Closing Date; and

(F) Liabilities and obligations which arise out of claims or events which occurred prior to the Closing Date and for which Seller has insurance coverage under

policies in force on or prior to the Closing Date, except to the extent of Seller's self-insured retention with respect to such claim or event.

3. The Closing.

The consummation of the sale of the Division shall occur at a closing (the "Closing") to be held at the offices of Winston & Strawn, Chicago, Illinois at 10:00 A.M. on the later to occur of February 17, 1987 or as soon as practicable after the satisfaction or waiver of all the conditions to Closing set forth in Section 8 hereof, or such other place, time and date as may be mutually agreed upon by Buyer and Seller. Such date is herein sometimes referred to as the "Closing Date". At the Closing:

(a) Seller shall deliver to Buyer the following:

(i) duly executed deeds, bills of sale, assignments and other documents (the "Bills of Sale and Assignments"), satisfactory in form and substance to Buyer and its counsel, as may be required to effect or evidence the sale and conveyance to Buyer of the Purchased Assets, free and clear of all security interests, claims, liens and encumbrances, except those contemplated by this Agreement;

(ii) the documents required of Seller pursuant to Section 8(a) hereof;

(iii) a leasehold owner's title insurance policy on ALTA Leasehold Owner' s Policy-1975 with extended coverage endorsement guaranteeing over the standard exceptions to title customarily contained in such policy dated the Closing Date issued by Chicago Title insurance Company with respect to the leased real property occupied by the Division located in Collierville, Tennessee, (A) naming Buyer as the insured Party and (B) insuring the leasehold estate of Buyer

under the lease described in Exhibit B hereto in an amount at least equal to the fair market valve thereof, including improvements thereon, and subject only to such minor encumbrances or imperfections, if any, which are not substantial in nature or amount and which do not detract from the value thereof as presently used and will not impair the operations of the Division thereat and to liens of current property taxes not delinquent or subject to penalty;

(iv) owner's title insurance policies on ALTA 1970 Owner's Form B with extended coverage endorsement guaranteeing over the standard exceptions to title customarily contained in such policies dated the Closing Date issued by Chicago Title Insurance Company, with respect to the real property described in Exhibit B hereto, (A) naming Buyer as the insured party and (B) insuring the fee simple title of Buyer in such real property in an amount at least equal to the aggregate fair market value thereof, including improvements thereon, and subject only to such minor encumbrances or imperfections, if any, which are not substantial in nature or amount and which do not detract from the value thereof as presently used and will not impair the operations of the Division thereat and to liens of current property taxes not delinquent or subject to penalty; and

(v) such other documents as Buyer or its counsel may reasonably request to carry out the purposes of this Agreement.

(b) Seller shall cause the sale of the shares of equity capital of Clevite S.r.l. to Buyer or its designee to be recorded in the register of shareholders of Clevite S.r.l.

(c) Buyer shall pay Seller an amount equal to the Purchase Price (estimated on the basis of the November 30, 1986 Balance

Sheet) less a holdback of $10,000,000 (the "Closing Date Payment") by wire transfer of immediately available funds to an account designated by Seller.

(d) Buyer shall execute and deliver to Seller the following:

(i) an undertaking or undertakings (the "Assumption Agreement"), in form and substance satisfactory to Seller and its counsel, wherein Buyer will assume and agree to (A) pay, perform and discharge the Assumed Liabilities as they become due, (B) indemnify and hold harmless Seller and its Affiliates from any and all loss, cost or expense incurred by Seller or any of its Affiliates arising out of the assertion against them of any of the Assumed Liabilities and (C) provide warranty replacements and/or repairs to customers for defective products of the Division sold by Seller prior to the Closing Date, but only to the extent that the Division would have accepted such products for return, replacement or repair in accordance with its past practices and subject to the condition that, with respect to products manufactured at the plants of the Division located at Lake City, MN or McConnelsville, OH, Buyer shall be reimbursed by Seller for Buyer's standard manufacturing costs of replacement parts, in the case of such products which are scrapped, and Buyer's direct costs plus overhead valued at 100%, in the case of such products which require rework or repair; provided that Seller shall have received written notice from Buyer of any such warranty claim within the eighteen months following the Closing Date;

(ii) the documents required of Buyer pursuant to Section 8(b) hereof; and

(iii) such other documents as Seller or its counsel may reasonably request to carry out the purposes of this Agreement.

4. Payment of Balance of Purchase Price.

Immediately after the consummation of the sale on the Closing Date, Seller shall take such steps as shall be necessary to prepare a balance sheet for the Division as of the Closing Date. Such balance sheet, as adjusted and approved as hereinafter provided, is herein called the "Closing Balance Sheet." The Closing Balance Sheet shall be prepared by Seller on a basis consistent with the November 30, 1986 Balance Sheet, including designations of Purchased Assets, Excluded Assets, Assumed Liabilities and Excluded Liabilities in a manner consistent with the November 30, 1986 Balance Sheet and (except as otherwise noted in such Closing Balance Sheet and in the November 30, 1986 Balance Sheet) in accordance with generally accepted accounting principles; provided that Buyer and its auditors shall have the right to participate in the preparation of such Closing Balance Sheet. Immediately after the Closing Date Seller and Buyer shall take, or cause to be taken, a joint physical inventory of all inventories of the Division. Exhibit C attached hereto and made a part hereof sets forth the accounting policies and procedures to be applied with respect to items of inventory and property, plant and equipment to be included in the Closing Balance Sheet. Buyer shall afford Seller access to the facilities and books and records of the Division then controlled by it and the use of its personnel as reasonably necessary for the purpose of preparing the Closing Balance Sheet. The Closing Balance Sheet, together with a certificate of the chief financial officer or chief executive officer of Seller, to the effect that, to his best knowledge, the Closing Balance Sheet has been prepared in accordance with Exhibit C and in all material respects fairly and accurately reflects the assets and liabilities of the Division as of

the Closing Date, shall be delivered to Buyer within 45 days after the Closing Date. Within 15 days after delivery of the Closing Balance Sheet Buyer shall notify Seller whether the Closing Balance Sheet is acceptable to it. If the Closing Balance Sheet is acceptable, it shall form the basis for computation of the Purchase Price. If it is not acceptable, Buyer shall furnish Seller a statement of written objections. Thereupon the independent public accountants of Seller and Buyer shall meet and agree upon adjustments to be made to the Closing Balance Sheet. In the event that they are unable to agree an such adjustments, the matters in question shall be submitted to a third mutually acceptable firm of independent public accountants whose decision thereon will be binding on the parties hereto. The fees of such firm shall be shared equally by Seller and Buyer. The Closing Balance Sheet, as adjusted and approved by such independent public accountants, shall form the basis for the computation of the Purchase Price. If the Purchase Price, when computed on the basis of the Closing Balance Sheet initially delivered by Seller to Buyer as provided above, shall be greater than the Closing Date Payment made by Buyer to Seller on the Closing Date, Buyer shall pay to Seller within five business days after the date of delivery of such Closing Balance Sheet by Seller an amount equal to such excess payable by wire transfer of immediately available funds to an account designated by Seller; provided that in the event of a disagreement on the Closing Balance Sheet, Buyer shall be entitled to withhold the amount in dispute until resolution of the disagreement pursuant to this Section 4. If the Purchase Price, when computed on the basis of the Closing Balance Sheet initially delivered by Seller to Buyer as provided above, shall be less than the Closing Date Payment made by Buyer to Seller on the Closing Date, Seller shall pay to Buyer within five business days after the date of delivery of such Closing Balance Sheet by Seller an amount equal to the deficiency by wire transfer of immediately available funds to an account designated by Buyer; provided that in the event of a disagreement on the Closing

Balance Sheet, Seller shall be entitled to withhold the amount in dispute until resolution of the disagreement pursuant to this Section 4. If any amount was withheld by Buyer or Seller as provided above, the amount ultimately determined to be due shall be paid by the party owing same within five business days after the date of delivery of the adjusted and approved Closing Balance Sheet. Any payment made pursuant to this Section shall also include interest on the amount paid from the Closing Date to the date of payment at the rate per annum equal to the prime commercial lending rate of Wells Fargo Bank, N.A. in effect from time to time.

5. Representations and Warranties of Seller.

Seller represents and warrants that:

(a) Organization and Powers of the Seller. Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has the corporate power to carry on its business as such business is now being conducted and is duly qualified or licensed to do business as a foreign corporation in each jurisdiction in which the character of the properties or the nature of the business of the Division makes such qualification necessary.

(b) Necessary Authorization or Approvals. Seller has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. All acts and other proceedings required to be taken by or on the part of Seller to authorize it to carry out this Agreement and the transactions contemplated hereby have been duly and properly taken. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller in accordance with its terms. Neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby is

prohibited by, or, except for the governmental filings referred to in the Disclosure Schedule, requires Seller to obtain any consent, authorization, approval or registration under, any law, rule or regulation, or any judgment, order, writ, injunction, or decree, which is binding upon Seller, or, except for the required consents referred to in the Disclosure Schedule, the terms of any contract to which Seller is a party. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby will not, violate any provision of, or result in any acceleration of any obligations under, or the creation or imposition of any lien pursuant to, any mortgage, lien, lease, agreement, instrument, order, arbitration award, judgment or decree and will not violate or conflict with the Certificate of Incorporation or By-Laws of Seller or any other material restriction of any kind or character to which the Division is subject, except that the assignment of the leases, contracts and agreements so indicated in the Disclosure Schedule requires the consent of the party thereto other than Seller.

(c) Subsidiaries and Other Investments. The Disclosure Schedule sets forth the name, jurisdiction of incorporation, capitalization and percentage of outstanding capital stock owned, directly or indirectly, by Seller with respect to any corporation the securities of which are included in the Purchased Assets. Each such corporation has been duly organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the corporate power to carry on its business as such business is now being conducted. The transfer of the capital stock of each such corporation does not require the consent, approval or authorization of any third party (governmental or other wise), and Seller has, and upon consummation of the transactions contemplated hereby shall convey to Buyer, good and marketable title to such stock free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character.

(d) Financial Statements. The November 30, 1986 Balance Sheet, including the notes thereto, was prepared in accordance with (i) generally accepted accounting principles on a basis consistent with those used in preparing Seller's Consolidated Financial Statements as of December 31, 1985, except as otherwise specified therein, and (ii) the books and records of the Division, which books and records are correct and complete in all material respects. The November 30, 1986 Balance Sheet presents fairly the financial position of the Division as of the date thereof. Except as and to the extent reflected or reserved against in the November 30, 1986 Balance Sheet (including the notes thereto), the Division did not have as of November 30, 1986 any liabilities or obligations (absolute or contingent) of a nature customarily reflected in a balance sheet (or the notes thereto) prepared in accordance with generally accepted accounting principles.

(e) Absence of Certain Changes. Except as set forth in the Disclosure Schedule or as contemplated or permitted by this Agreement, since November 30, 1986 the Division has been operated in the ordinary course of business and there has not been (i) any material adverse change in the condition, assets or operations, financial or otherwise, of the Division; (ii) any damage, destruction or loss, whether covered by insurance or not, materially and adversely affecting the properties and business of the Division; (iii) any increase in the compensation payable or to become payable by the Division to its key employees or any adoption of or increase in any bonus, insurance, pension or other employee benefit plan, payment or arrangement made to, for or with any such key employees, except increases occurring in the ordinary course of business (but not across-the-board, general salary increases); (iv) any labor dispute, other than routine matters, none of which is material; or (v) any entry into any material commitment or transaction

(including without limitation any borrowing or capital expenditure) other than in the ordinary course of business.

(f) Title and Related Matters. Except as set forth in the Disclosure Schedule:

(i) Seller has good and marketable title to all the properties, interests in properties and assets, real and personal, reflected on the November, 30, 1986 Balance Sheet or acquired after November 30, 1986 (except properties, interests in properties and assets sold or otherwise disposed of since November 30, 1986 in the ordinary course of business), free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character, except (A) the lien of current taxes not yet due and payable, (B) such imperfections of title, liens and easements as do not materially detract from or interfere with the present use or value of the properties subject thereto or affected thereby, or otherwise materially impair present business operations at such properties and (C) liens securing debts which are reflected on the November 30, 1986 Balance Sheet, the existence of which are reflected in the Disclosure Schedule. Subject to (X) receipt of third party consents under any claims, contracts, licenses, leases, agreements, commitments, sales orders or purchase orders of the Division, (Y) liens, charges, encumbrances, options and other adverse rights or interests which arise from actions of Buyer, and (Z) the application of the bulk sales laws of any jurisdiction to the transactions contemplated hereby (compliance with which is expressly waived by Buyer in reliance upon Seller's indemnification pursuant to Section 13 hereof), upon consummation of the transactions described herein, good and marketable title thereto shall have been vested in Buyer free and clear of all mortgages, liens, pledges, charges or

encumbrances, except for all those matters referred to in the preceding sentence.

(ii) The plants, structures and equipment of the Division that are necessary to the operation of its business are in good operating condition and repair, ordinary wear and tear excepted. All properties material to the present operations of the Division are reflected on the November 30, 1986 Balance Sheet, in the manner and to the extent required by generally accepted accounting principles, or in the Disclosure Schedule.

(iii) All leases pursuant to which the Division leases real or personal property material to its business are valid and effective in accordance with their respective terms, there is not, under any of such leases, any existing default, or any event which with notice or lapse of time or both would constitute a default in respect thereof by the Division, and Seller is not aware of any default, or any event which with notice or lapse of time or both would constitute a default, by any other party in respect thereof.

(iv) This Division has not received notice of violation of any applicable zoning regulation, ordinance or other law, order, regulation or requirement relating to its operations or its owned or leased properties material to its business with which it has not complied, and there are no condemnation proceedings pending or, to the knowledge of Seller, threatened with respect to such properties.

(v) Seller enjoys peaceful possession of all real properties owned or leased by the Division.

(g) Litigation. The Disclosure Schedule sets forth each and every claim, suit, action or proceeding pending or, to the

knowledge of Seller, threatened against or affecting the Division and each and every judgment, decree, injunction, rule or order of any court, governmental, department, commission, agency, instrumentality or arbitrator outstanding against the Division. Seller is not aware of the existence of any basis for the assertion of any such claim, suit, action, proceeding, judgment, decree, injunction, rule or order which would reasonably be expected to materially and adversely affect the business, operation, properties or the condition, financial or otherwise, of the Division.

(h) Governmental Authorization and Regulations. The Disclosure Schedule contains a list of all licenses, franchises, permits and other governmental authorizations held by the Division that are material in connection with its business. Such licenses, franchises, permits and other governmental authorizations are valid and sufficient for all business presently carried on by the Division. The business of the Division is not being conducted in violation of any law, ordinance or regulation of any governmental entity, except for violations which either singly or in the aggregate have not had, and cannot be reasonably expected to have, a material adverse effect on such business, operation, properties or the condition, financial or otherwise, of the Division. There are no proceedings pending or, to the knowledge of Seller, threatened by any such governmental entity which could result in the Suspension of the business or operations of the Division, and Seller is not aware of any facts which could give rise to such a proceeding.

Except as set forth in the Disclosure Schedule or in the Preliminary and Final Reports with respect to the facilities of the Division prepared by Clayton Environmental Consultants, Inc. at the request of Buyer, no Corporate officer or officer of the Division is aware, after due inquiry and review with appropriate division personnel, of any material violation, either presently or within the past five years, of, any law, rule or regulation relating

to safety, environmental protection or pollution control, including, without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Liability and Compensation Act, the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Occupational Safety and Health Act and corresponding foreign, state and local statutes, ordinances and regulations.

(i) Trademarks, Patents and Copyrights. The Disclosure Schedule contains a list and summary description of:

(i) all trademark or trade name registrations and patents, and all applications pending therefor, which are owned by Seller and relate to the Division Business, other than those specifically excluded from Purchased Assets; and

(ii) all material trademark, trade name, trade secret, patent, invention, technical assistance or "knowhow" licenses (or similar agreements) granted by or to Seller and which relate to the Division Business.

All of such trademark or trade name registrations and patents and all copyrights of Seller which relate to the Division Business are valid and in full force and effect and are sufficient to conduct the business of the Division; Seller has not received any notice of infringement by the Division of any trademark registration (whether issued or applied for) or any trade name or any patent or copyright of any other person, firm or corporation, and Seller is not aware of any facts which would serve as a basis for such infringement; and, except as set forth in the Disclosure Schedule, Seller has not received any notice that any other person is infringing any of Seller's trademark or trade name registrations, patents or copyrights which relate to the Division.

(j) Other Assets. The Disclosure Schedule contains a list of all capitalized items of buildings, machinery, equipment, furniture, fixtures and leasehold improvements relating to the Division Business. As soon as practicable after the Closing, Seller shall update such list as necessary to make it current as of the Closing Date.

(k) Contracts. The Disclosure Schedule contains a list of every contract relating to the Division Business which is material or which involves the future payment by or to the Division of $100,000 or more and has a term of more than one year. In addition, the Disclosure Schedule contains:

(i) a list of all officers of the Division and any other employee of the Division whose current annual salary or rate of compensation is $60,000 or more, together with a list of any employment (not terminable on six months or less notice), bonus, incentive or severance pay agreement or arrangement relating to such employees to be assumed by Buyer hereunder;

(ii) a list of all union contracts which relate to employees of the Division;

(iii) a list of all employment and consulting contracts of the Division; and

(iv) a list of all employee benefit plans (within the meaning of Section 3(3) of the Employee Retirement Income Security Act, as amended ("ERISA")) affecting or relating to the Division and its employees or former employees ("Employee Benefit Plans"), including all welfare plans ("Welfare Plans") and pension plans ("Pension Plans") (as such terms are defined in Sections 3(l) and 3(2), respectively, of ERISA).

Seller is not in any breach of or default under any material contract to which it is a party or under which it is obligated and which relates to the Division Business, nor have any claims of default been raised against Seller or, the Division with respect to such contracts. Seller is not aware of any default by other parties of such contracts. Each such contract is a legal, valid and binding obligation of Seller, enforceable in accordance with its terms.

None of the Employee Benefit Plans is a multiemployer plan, as defined in Section 401(a) of ERISA, Subtitle E of Title IV of ERISA does not apply to any such plans and no withdrawal liability to Buyer will occur as a result of the consummation of the transactions contemplated by this Agreement. The 401(k) defined contribution plan of Seller (the "401(k) Plan") has been maintained in compliance in all material respects with applicable federal and state laws, including ERISA and the Internal Revenue Code of 1954, as amended (the "Code"), and the Internal Revenue Service has issued a favorable determination letter stating that the 401(k) Plan meets the requirements for qualification and is qualified under Section 401(a) of the Code.

With respect to the Industrial Development Bonds relating to the Colliersville, TN and Lake City, MN, facilities of the Division, no event or state of facts that would give rise to or lead to a determination of taxability has occurred or exists.

(l) Accuracy and Limitation of Representations and Warranties. Each warranty and representation made herein, the Disclosure Schedule, each Exhibit hereto and any certificate, document or other material furnished or to be furnished by Seller in connection with this Agreement and the transactions contemplated hereby is true and complete in all material respects, does not contain any untrue statement of a material fact, and does not omit to state any material fact necessary in order to make the statements included herein or therein not misleading.

For purposes of this Section 5, Seller is not making any of the representations or warranties set forth in Sections 5(a), 5(b) the first sentence of 5(g), the first sentence of 5(h), 5(j) or 5(k), except for the second paragraph of 5(k), with regard to Clevite S.r.l.

6. Representations and Warranties of Buyer.

Buyer represents and warrants that:

(a) Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the corporate power to carry on its business as now being conducted.

(b) Necessary Authorization and Approval. Buyer has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. All acts and other proceedings required to be taken by or on the part of Buyer to authorize it to carry out this Agreement and the transactions contemplated hereby have been duly and properly taken. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer in accordance with its terms. Neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby will violate or conflict with the Articles of Incorporation or By-Laws of Buyer or is prohibited by, or requires Buyer to obtain any consent, authorization, approval or registration under, any law, rule or regulation, or any judgment, order, writ, injunction or decree, which is binding on Buyer, or the terms of any contract to which Buyer is a party.

7. Additional Covenants.

(a) Conduct of Business of Division Pending the Closing. Pending the Closing, and except as otherwise consented to or approved by Buyer in writing:

(i) Seller shall operate the business of the Division diligently and in good faith, consistent with past management practices and shall use its best efforts to preserve and protect the goodwill and, business of the Division, including its relationships with employees, suppliers, customers, creditors and others having a business relationship with the Division;

(ii) Seller shall not make any capital expenditures, or commitments with respect thereto, with respect to the Division Business except (A) capital expenditures which are included in its 1986 capital budget, previously approved by the management of Seller and furnished to Buyer, (B) individual appropriations heretofore approved by the management of Seller and furnished to Buyer and (C) such additional capital expenditures or commitments, not exceeding $500,000 in the aggregate, as Seller may in its discretion deem appropriate; and

(iii) Except as set forth in the Disclosure Schedule, or as contemplated or permitted by this Agreement, Seller will not, without the written consent of Buyer, enter into any material transaction, make any material commitment with respect to the Division Business or change, amend, terminate or otherwise modify any material agreement, contract, lease or commitment to which the Division is a party.

(b) Access to Information. From and after the date of this Agreement, to and including the Closing Date, Seller (i) shall cause to be afforded to the officers, employees, attorneys, accountants, actuaries and other authorized representatives of the Buyer free and full access, during normal business hours, to the

offices, plants, properties, books and records of the Division in order that the Buyer may have full opportunity to make such reasonable legal, financial, accounting, actuarial and other reviews or investigations of the Division as Buyer shall desire to make, (ii) shall cause the independent public accountants of Seller to permit the independent public accountants of Buyer to inspect their accounting and auditing work papers and other records relating to the Division, (iii) shall furnish to Buyer and its authorized representatives such additional financial and operating data and other information as to the assets, properties, operations and business of the Division as the Buyer shall from time to time reasonably request and (iv) shall otherwise cooperate fully in permitting Buyer to investigate the business, properties and financial condition of the Division; provided, however, that during such period neither Buyer nor any of its employees or agents shall contact or otherwise communicate with any customer or employee (other than corporate officers) of Seller without the prior consent of Seller, which consent shall not be unreasonably withheld. Provided further that employees and agents of Buyer or any Affiliate of Buyer may continue to contact customers of the Division in a manner consistent with historical practices.

(c) Return of Documents. In the event that the Closing shall not take place hereunder, Buyer shall return promptly to Seller all documents (including all copies thereof) relating to the Division which shall have been furnished to Buyer in connection with the transactions contemplated by this Agreement and shall hold in strict confidence and shall not use or disclose to any third party any information concerning the Division obtained from such documents or otherwise in connection with the transactions contemplated hereby (except as may be required by law or unless and until such time as Seller shall have advised Buyer that such information is not confidential).

(d) Further Assurances. After the Closing, upon Buyer's request, Seller shall from time to time execute and deliver to Buyer all such instruments and documents or further assurances as shall be necessary to vest in Buyer title to and possession of the Purchased Assets and shall provide or otherwise make available to Buyer all such documents, instruments, agreements and other information as shall be necessary to enable Buyer to carry out its obligations with respect to the Assumed Liabilities or as otherwise required to carry out the obligations of Seller and fully to consummate the transaction contemplated hereby. From the date hereof, Seller shall use its best efforts to obtain the necessary consent of any third party to the transactions contemplated hereby. To the extent that the full benefit of any existing claims, contracts, licenses, leases, commitments, sales orders or purchase orders of the Division cannot be obtained for Buyer without the consent of a third party, Seller shall use its best efforts to obtain the consent of the other party or parties to any such claim, contract, license, lease, commitment, sales order or purchase order on or before the Closing Date. Except to the extent that the obtaining of any such consent is specified in Section 8(a) hereof as a condition precedent to Buyer's obligations hereunder, if such consent is not obtained by such date, Seller shall cooperate with Buyer in any reasonable arrangement effective on such date and designed to provide for the Division the benefits under any such claim, contract, license, lease, commitment, sales order or purchase order, including enforcement for the account of Buyer after the Closing Date of any and all rights of Seller against the other party thereto arising out of the breach or cancellation thereof by such other party or otherwise.

At the Closing, Seller shall deliver to Buyer evidence reasonably satisfactory to Buyer of Buyer's right to continue to occupy the premises, currently leased by the Division from Gould Inc. at McConnelsville, OH, for a period of not less than twelve months following the Closing Date, subject to a reduction in the

area of the leased premises of not more than 6,000 square feet and on such other terms and conditions as may be reasonably acceptable to Buyer.

Buyer shall cooperate with Seller to obtain all necessary consents in connection with the assignment by Seller to Buyer of the Industrial Revenue Bonds (collectively the "IRBs") with respect to the Colliersville, TN and Lake City, MN facilities of the Division. Such cooperation shall include the provision of letters of credit, or other credit support, and assumption documents as may be required under the terms of such IRBs. To the extent that, notwithstanding the cooperative efforts of Buyer and Seller, it is not possible to transfer the benefits of the financing under the IRBs to Buyer and, if in the reasonable judgment of Buyer and Seller, all meritorious defenses to the lender's demand for prepayment have been exhausted, then Seller shall pay to Buyer within five days after the date of such determination, as reimbursement for the loss of the favorable interest rates which are part of such financing, the following sums:

(i) with respect to Colliersville $65,000.00.

(ii) with respect to Lake City $35,000.00.

(e) Use of Inventory and Packaging. Notwithstanding anything herein contained to the contrary, Buyer shall have the right, for a period of three years from and after the Closing Date, to sell and use all inventory and packaging materials included in the Purchased Assets which contain any trademark or logo of Seller or any of its Affiliates not included in the Purchased Assets without payment of any royalty or charge of any kind. All packaging materials used by Buyer which contain any such name or logo of Seller or any Affiliate of Seller shall, to the extent

practicable, include thereon some designation or code which will permit them to be differentiated from those previously used by Seller Buyer shall indemnify and hold harmless Seller and its Affiliates from any and all loss, cost or expense incurred by Seller or any of its Affiliates arising out of the sale by Buyer of inventory, or its use of packaging materials, which contain the name or logo of the Seller or any Affiliates of Seller.

(f) Books and Records. Unless otherwise consented to in writing by Seller, Buyer will not, for a period of seven years following the date hereof, destroy or otherwise dispose of any of the books and records of the Division acquired by Buyer hereunder without first offering to surrender such books and records or any portion thereof which Buyer may intend to destroy or dispose of to Seller and Buyer shall allow Seller's representatives, attorneys and accountants access to such books and records upon reasonable request and during Buyer's normal business hours for the purpose of examining and copying.

(g) Filings. Buyer and Seller shall cooperate and use their best efforts to prepare and file all applications, forms, reports and other documents, including, without limitation, those required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the rules and regulations thereunder ("1976 Act"), as promptly as practicable and to act thereafter with all reasonable diligence in order to obtain such approvals, consents, authorizations, waivers and permits from any person, firm, corporation or governmental or other entity as may reasonably be necessary or appropriate in order to enable Buyer to acquire the Division in the manner provided herein.

Buyer and Seller shall cooperate and use their best efforts to resist entry of any order of the type referred to in Sections 8(a)(iv) or (v) or 8(b)(iv) or (v) hereof and to appeal such an order if so entered.

(h) Non-Competition. For the period of three years from and after the Closing Date, neither Seller nor any Affiliate of Seller shall engage or participate in the manufacture, sale or distribution of any products or parts hereof of the type presently being manufactured, sold, distributed or developed by the Division; provided, however, that Seller or any Affiliate of Seller may (i) carry on any activity conducted by Seller or any Affiliate of Seller, other than the Division, on or prior to the Closing Date and (ii) engage in the sale or distribution of any products included in the inventory of the Division which are being retained by Seller, and not sold to Buyer, until such time as such retained inventory is exhausted.

8. Conditions of Closing.

(a) Conditions Precedent to Buyer's Obligations Hereunder. All obligations of Buyer under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent that Buyer may waive any one or more thereof;

(i) The representations and warranties of Seller contained in this Agreement shall be true in all material respects on and as of the Closing Date with the same effect as if said representations and warranties had been made on and as of the Closing Date; Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Buyer shall have been furnished with a certificate of Seller, dated the Closing Date, certifying in such detail as Buyer may request, to the fulfillment of the foregoing conditions.

(ii) Buyer shall have received a favorable opinion, dated the closing Date and addressed to Buyer, of counsel for Seller, to the effect that:

(A) Seller is a corporation duly organized, validly existing and in good standing under the jurisdiction of its incorporation,

(B) Seller has the corporate power to execute, deliver and perform this Agreement and the Bills of Sale and Assignments and to own all of its proper ties and assets and to carry on the Division Business as then being conducted,

(C) This Agreement has been duly authorized, executed and delivered by Seller and constitutes the valid and legally binding obligation of Seller in accordance with its terms;

(D) Except for those laws disclosed to Buyer in the Disclosure Schedule, neither the execution, delivery or performance of this Agreement, or the consummation of the transactions contemplated hereby, is prohibited by, or requires Seller to obtain any consent, authorization, approval or registration under, any law, rule or regulation, or any judgment, order, writ, injunction or decree, known to such counsel, which is binding upon Seller;

(E) Except for the required consents disclosed to Buyer in the Disclosure Schedule, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not violate or conflict with the Certificate of Incorporation or By-Laws of Seller and do not violate any provision of, or result in any acceleration of any obligations under, or the creation

or imposition of a lien pursuant to, any contract, mortgage, lien, lease, agreement, instrument, order, arbitration award, judgment or decree, known to such counsel, relating to the Division Business; and

(F) The Bills of Sale and Assignments have been duly authorized, executed and delivered by Seller and constitute valid conveyances, transfers and assignments by Seller to the Buyer of all of the right, title and interest of Seller in and to the Purchased Assets.

(iii) The waiting period applicable to the consummation of this transaction under the provisions of the 1976 Act shall have expired.

(iv) No order shall have been entered, and not vacated, by a court or administrative agency of competent jurisdiction, in any proceeding or action, which enjoins, restrains or prohibits consummation of this transaction.

(v) No order shall have been entered, and not vacated, by a court or administrative agency of competent jurisdiction, in any proceeding or action, which is unsatisfactory to Seller or Buyer and which limits in a material way the ability of Buyer to operate or control the business of the Division.

(vi) At the Closing, there shall be delivered to Buyer a copy, signed by Seller, of each of the following agreements:

(A) A Computer Services Agreement, relating to the Use by Seller and Buyer of computer facilities of Seller located in Cleveland, Ohio, substantially in the form of Exhibit D attached hereto and made a part hereof;

(B) A Trademark License Agreement, relating to the name "Clevite", substantially in the form of Exhibit E attached hereto and made a part hereof;

(C) A Lease Agreement, relating to Seller's plants located in Cleveland, Ohio, substantially in the form of Exhibit F attached hereto and made a part hereof;

(D) An Escrow Agreement, relating to certain environmental matters, substantially in the form of Exhibit G attached hereto and made a part hereof;

(E) An agreement, reasonably satisfactory to Buyer and Seller and their respective counsel providing for Seller's Technology Center in Cleveland, Ohio to perform testing, research and development services for Buyer of the type historically performed by it for the Division and on terms and conditions substantially similar to those under which it performs such services for other third parties; and

(F) The documents required to be delivered by Seller pursuant to Section 3(a) hereof.

(b) Conditions Precedent to the Obligations of Seller Hereunder. All obligations of Seller under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent that Seller may waive any one or more thereof:

(i) The representations and warranties of Buyer contained in this Agreement shall he true in all material respects on and as of the Closing Date with the same effect as if said representations and warranties had been made on and as of the Closing Date; Buyer shall have

performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Seller shall have been furnished with a certificate of an officer of the Buyer, dated the Closing Date, certifying in such detail as the Seller may request, to the fulfillment of the foregoing conditions.

(ii) Seller shall have received a favorable opinion, dated the Closing Date and addressed to Seller, of counsel for the Buyer, to the effect that:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;

(B) Buyer has the corporate power to execute, deliver and perform this Agreement and the Assumption Agreement and to own all of its properties and assets and to carry on its business as then being conducted;

(C) This Agreement and the Assumption Agreement have been duly authorized, executed and delivered by Buyer and constitute valid and legally binding agreements of Buyer in accordance with their respective terms;

(D) Neither the execution, delivery or performance of this Agreement or the Assumption Agreement by Buyer, nor the consummation of the transactions contemplated hereby or thereby, is prohibited by, or requires Buyer to obtain any consent, authorization, approval or registration under, any law, role or regulation, or any judgment, order, writ, injunction or decree known to such counsel, which is binding upon Buyer;

(E) The execution and delivery of this Agreement and the Assumption Agreement by Buyer, and the consummation of the transactions contemplated hereby or thereby do not violate or conflict with the Articles of Incorporation or By-Laws of Buyer and do not violate any provision of, or result in any acceleration of any obligations under, or the creation or imposition of a lien pursuant to, any contract, mortgage, lien, lease, agreement, instrument, order, arbitration award, judgment or decree known to such counsel applicable to the Buyer; and

(F) The Assumption Agreement constitutes an enforceable agreement of Buyer to assume the Assumed Liabilities.

(iii) The waiting period applicable to the consummation of this transaction under the provisions of the 1976 Act shall have expired.

(iv) No order shall have been entered, and not vacated, by a court or administrative agency of competent jurisdiction, in any proceeding or action, which enjoins, restrains or prohibits consummation of this transaction.

(v) No order shall have been entered, and not vacated, by a court or administrative agency of competent jurisdiction, in any proceeding or action, which is unsatisfactory to Seller or Buyer and which limits in a material way the ability of Buyer to operate or control the business of the Division.

(vi) At the Closing, there shall be delivered to Seller a copy, signed by Buyer of each of the following agreements:

(A) The Agreements referred to in Section 8(a)(vi)(A), (B), (C) and (D) hereof; and

(B) The documents required to be delivered by Buyer pursuant to Section 3(d) hereof.

9. Indemnification and Remedies.

(a) Indemnification by Seller. After the Closing Date, Seller shall indemnify Buyer against and hold Buyer harmless from any liability, loss, damage or expense (including reasonable counsel fees incurred in litigation or otherwise) incurred, sustained or required to be paid by Buyer resulting from, arising out of or related to (i) any inaccuracy of any representation or warranty herein or in any writing delivered by Seller pursuant hereto; (ii) any breach of or failure to perform any covenant, condition or undertaking of Seller contained herein; and (iii) the Excluded Liabilities.

(b) Indemnification by Buyer. After the Closing Date, Buyer shall indemnify Seller against and hold Seller harmless from any liability, loss, damage or expense (including reasonable counsel fees incurred in litigation or otherwise) incurred, sustained or required to be paid by Seller resulting from, arising out of or related to (i) any inaccuracy of any representation or warranty herein or in any writing delivered by Buyer; (ii) any breach of or failure to perform any covenant, condition or undertaking of Buyer contained herein; and (iii) the Assumed Liabilities.

(c) Liability Limitations. The representations and warranties, covenants, agreements, indemnities and undertakings of the parties specified in this Agreement shall survive the Closing in accordance with this provision without the necessity of any other document being delivered at the

Closing; provided, however, that all representations and warranties and claims or indemnities, relating thereto, made in connection with this Agreement shall be limited and conditioned as follows:

(i) The representations and warranties shall survive the Closing and continue in full force and effect for the following period from and after the Closing Date:

(A) Sections 5(d), 5(e), 5(g), 5(h), 5(j) and 5(k), for a period of twelve months; and

(B) Sections 5(a), 5(b), 5(c), 5(f), 5(i), 6(a) and 6(b), for a period of five years.

(ii) Seller shall not be liable to Buyer based upon any misrepresentations or breaches of warranty until the losses, liabilities, damages, claims, costs (including reasonable counsel fees) and expenses incurred by Buyer based upon or as a result of such misrepresentations and breaches shall exceed in the aggregate an amount equal to 1/2 of 1% of the Purchase Price (the "Threshold"), where upon Buyer shall be entitled to indemnification hereunder by Seller for any loss, liability, damage, claim, cost (including reasonable counsel fees) or expense in excess of the Threshold. Notwithstanding the foregoing, in any case where this loss, liability, damage, cost (including reasonable counsel fees) or expense incurred by Buyer exceeds $100,000, Buyer shall be entitled to indemnification thereunder by Seller for the full amount thereof whether or not the Threshold has been exceeded, but such amount shall thereafter be excluded for purposes of calculating the Threshold.

(d) Procedure Relative to Indemnification. In the event that after the Closing Date any claim is asserted against a party hereto as to which such party is entitled to indemnification hereunder, such party ("the Indemnified Party") shall, if a claim in respect thereof is to be made against the party obligated to indemnify it pursuant to this Agreement ("the Indemnifying Party"), promptly after learning of such claim, notify the Indemnifying Party thereof in writing. The failure of the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which it may have to the Indemnified Party except to the extent that the Indemnifying Party shall actually have been prejudiced by such failure. The Indemnifying Party shall have the right, upon written notice to the Indemnified Party within 30 days after receipt from the Indemnified Party of notice of such claim, to conduct at its expense the defense against such claim in its own name or if necessary in the name of the Indemnified Party. In the event that the Indemnifying Party shall fail to give such notice, it shall be deemed to have elected not to conduct the defense of the subject claim and in such event the Indemnified Party shall have the right to conduct such defense and to compromise and settle the claim without prior consent of the Indemnifying Party. If the Indemnifying Party shall elect to conduct the defense of the subject claim, the Indemnified Party shall cooperate with and make available to the Indemnifying Party such assistance and materials as may be reasonably requested by it, all at the expense of the Indemnifying Party, and the Indemnified Party shall have the right, at its own expense, to participate in the defense. If the Indemnifying Party shall have elected to conduct the defense of the subject claim and shall be conducting such defense in good faith, the Indemnified Party shall not have the right to compromise or settle the claim except with the prior written consent of the Indemnifying Party. Any judgment entered or settlement agreed upon in the manner provided herein shall be

binding upon the Indemnifying Party and shall conclusively be deemed to be an obligation with respect to which the Indemnified Party is entitled to indemnification hereunder.

10. Termination and Waiver.

(a) Termination of Agreement Prior to Closing Date. This Agreement may, by notice given on or prior to the Closing Date, in the manner hereinafter provided, be terminated and abandoned:

(i) by either Seller or Buyer if a material default shall be made by the other with respect to the due and timely performance of any of its covenants and agreements contained herein, or with respect to due compliance with any of its representations and warranties contained herein, and such default shall not have been cured within fifteen (15) days after receipt of notice specifying particularly such default,

(ii) by Seller if all of the conditions set forth in Section 8(b) of this Agreement shall not have been satisfied on or before the Closing Date or waived by it on or before such date; or by Buyer if all of the conditions set forth in Section 8(a) of this Agreement shall not have been satisfied by such date or waived by it on or before such date,

(iii) by mutual consent of the Boards of Directors or Executive Committees of Seller and Buyer, or

(iv) by either Seller or Buyer if the Closing Date shall not have occurred prior to June 1, 1987.

The obligations of Buyer set forth in Section 7(c) hereof shall not be affected by any termination of this Agreement. Not withstanding the foregoing provisions of this Section no party hereto shall be entitled to exercise any right to terminate and abandon this Agreement if such party has willfully and intentionally defaulted under any provision of this Agreement or willfully and intentionally taken any action which resulted in the nonfulfillment of any condition to Closing hereunder unless such default shall have been cured and shall not be continuing, at the time of the exercise of such right.

(b) Waiver or Modification of Agreement. Any party hereto which is entitled to the benefits of this Agreement may, and has the right to, waive or modify in writing any term or condition hereof for its benefit at any time on or prior to the Closing Date.

11. Governing Law.

This Agreement shall be governed by and construed in accordance with the law of the State of Illinois.

12. Finder, etc.

Seller and Buyer each represents and warrants that neither it nor anyone acting on its behalf has made any commitment or done any other act which would create any liability of the other party for any brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement. Seller and Buyer shall indemnify and hold harmless the other from and against any and all claims arising out of any alleged breach by such party of the foregoing representations and agreements.

13. Bulk Transfer Laws.

Buyer hereby waives compliance by Seller with the provisions of any so-called Bulk Transfer Laws of any jurisdiction in connection with the sale of the Purchased Assets to Buyer. Seller shall indemnify and hold harmless Buyer against all liabilities of Seller which may be asserted by third parties against Buyer as a result of non-compliance with any such Bulk Transfer Laws, other than the Assumed Liabilities.

14. Notices, etc.

All notices, requests, demands and other communications hereunder shall be given in writing (which includes telex, telegraph and other wire transmission):

(a) if to the Buyer, to

JPI Acquisition, Inc.
c/o J.P. Industries Inc.
325 E. Eisenhower Parkway
Ann Arbor, MI 48104-8088
Attention: Vice President and General Counsel

(b) If to the Seller, to

Clevite Industries Inc.
1275 Milwaukee Avenue
Glenview, Illinois 60025
Attention: Vice President, Secretary
and General Counsel

(or to such other address as such person shall specify by notice hereunder), and shall be deemed to be effective when given in such manner, provided, that any notice given other

than in writing by registered or certified mail shall be confirmed in writing by registered or certified mail.

15. Section and Paragraph Headings.

The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

16. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. Expenses of Parties.

Except as otherwise specifically provided for herein, each of the parties hereto shall bear all expenses incurred by such party in connection with this Agreement including, without limitation, the charges of their respective counsel, financial advisors and finders. The cost of any title insurance Policy and all state and local transfer, stamp, vehicle, sales and use taxes and all notarial or similar fees imposed or incurred in connection with the consummation of the transaction contemplated by this Agreement and the cost of any economist retained by mutual agreement as an expert in connection with the 1976 Act shall be borne equally by Seller and Buyer.

18. Successors and Assigns.

The respective rights and obligations of either party hereto shall not be assignable without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the successor and assigns of the parties

hereto. Nothing herein contained is intended to confer upon any person, other than the parties hereto and their respective permitted successors, assigns and nominees, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

19. Indemnification Provisions.

Each indemnification provision contained herein or in the Assumption Agreement shall be deemed to include indemnification from and against all costs and expenses, including counsel fees, incident to any and all actions, suits, demands, assessments or judgment with respect to any claim relating to the subject matter of the indemnification.

20. Entire and Sale Agreement.

This Agreement, the Disclosure Schedule, the Exhibits referred to herein and the letter agreement dated November 14, 1986 by and between Seller and Buyer constitute the entire agreements between the parties hereto and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.

21. Pension Plans.

(a) Prior to Closing, Seller shall furnish to Buyer information which shall be accurate and complete in all material respects with regard to current census data concerning substantially all Division employees and retirees (and individuals covered by the Employee Benefit Plans through such individuals), consisting of names, addresses, dates of hire and birth (and, if applicable, dates

of termination of Division employment), the Employee Benefit Plans in which such individuals participate, service accumulated under the Employee Benefit Plans for purposes of participation, vesting and benefit accrual and those individuals receiving a Medicare Part B supplement benefit under specified Employee Benefit Plans. Following the Closing, Seller shall update the foregoing information as necessary to make it current as of the Closing Date.

(b) On the Closing Date Buyer will offer employment to or be responsible for severance of all of the employees of the Division (the "Transferred Employees"). Following the Closing:

(i) With respect to welfare plans:

(A) Buyer shall provide Transferred Employees (except Transferred Employees whose employment relationship with Seller is subject to a collective bargaining agreement as of the Closing Date ("Union Transferred Employees")) with the opportunity to participate in existing welfare plans of Buyer pursuant to the terms of such welfare plans.

(B) Buyer shall provide Union Transferred Employees with welfare benefits (including retiree health care benefits upon retirement from Buyer after the Closing Date) substantially similar to those provided to such employees under the Welfare Plans and the Pension Plans as of the Closing Date in which such employees participated as of the Closing Date.

(C) Buyer shall provide persons who are retirees of the Division as of the Closing Date and who are

receiving health care benefits provided by Seller as of the Closing Date with substantially similar health care benefits. To the extent permitted by law, Buyer shall have the option to terminate such benefits at any time for any reason.

(ii) With respect to pension plans:

(A) Salaried Transferred Employees shall become participants in Buyer's pension plan for salaried employees in accordance with the participation provisions in Buyer's pension plan for salaried employees.

(B) Except with respect to the 401(k) Plan, Transferred Employees not described in the preceding paragraph who, as of the Closing Date, are participants in Pension Plans shall become participants in one or more retirement plans established by Buyer which provide retirement benefits substantially similar to benefits which such Transferred Employees were receiving as participants in the Pension Plans as of the Closing Date.

(C) With respect to Transferred Employees who are participants in the 401(k) Plan as of the Closing Date, such Transferred Employees shall become participants in an existing 401(k) defined contribution plan of Buyer (the J.P. Industries, Inc. 401(k) Retirement Savings Plan) as of the Closing Date. Seller shall provide such Transferred Employees with the opportunity to have their account balances in the 401(k) Plan transferred directly to the trust for the Buyer's 401(k) defined contribution plan.

(D) Transferred Employees shall receive credit for service for purposes of vesting and participation, but not benefit accrual, under pension plans of Buyer in which they become participants to the extent that such service was credited (or would have been credited) under the applicable Pension Plan in which they participated (or would have participated it their employment with Seller had continued) as of the Closing Date.

(c) Except as expressly provided in this Section, Buyer is expressly not assuming any responsibility or liability for the administration of, contributions to, continuation of or distributions from any Pension Plan, Welfare Plan or any other Employee Benefit Plan. However, Buyer shall inform Seller when former employees of Seller terminate their employment with Buyer so that Seller can determine the rights of such individuals, under the Pension Plans. Except with respect to Medicare Part B supplementary benefits as provided for in this Section, Buyer has no obligation for Pension Plan benefits to former employees of Seller relating to their employment with Seller.

(d) There shall be no transfer of assets from any Pension Plan to Buyer's retirement plans (except as provided above with regard to the 401(k) Plan), and Transferred Employees shall look only to Seller (and not Buyer) with respect to any rights or interests they may have in any Employee Benefit Plan.

(e) Seller shall provide Transferred Employees who are participants in the Pension Plans as of the Closing Date with credit for service with Buyer for purposes of vesting under the Pension Plans.

(f) Seller and Buyer shall cooperate and provide such information to each other as is reasonably necessary for them to fulfill their respective obligations hereunder.

(g) Seller shall indemnify Buyer for all expenses, including reasonable attorneys' fees, which Buyer may incur relating to litigation regarding the Employee Benefit Plans. Buyer shall indemnify Seller for all expenses, including reasonable attorneys' fees, which Seller may incur relating to litigation regarding any pension or welfare plan of Buyer, including, without limitation, litigation resulting from Buyer's termination of the retiree health care benefits as permitted in paragraph (b)(i)(C) above.

22. Accounts Receivable.

Seller shall promptly pay to Buyer the amount of any and all cash receipts received by Seller relating to the accounts receivable of the Division outstanding on the Closing Date. Commencing with the Closing Date, Buyer shall use its best efforts in accordance with its customary collection procedures to collect the accounts receivable of the Division outstanding on the Closing Date, and during such period Seller may not exercise any such procedures with respect thereto; provided, however, that Buyer shall have no obligation to institute any legal proceedings to collect such accounts receivable. In applying any payment made after the Closing Date by an account debtor who at the time of such payment is liable for indebtedness accrued as an account receivable on the books of the Division on or prior to the Closing Date and as an account receivable on the books of the Division after the Closing Date, such payment shall be applied to the indebtedness of such customer as specified by such customer, or in the absence of such specification, in the order in which such customer's

indebtedness was accrued. Buyer shall provide Seller with a monthly recapitulation of all activity relating to accounts receivable of the Division outstanding on the Closing Date and shall permit Seller, upon reasonable notice, to inspect Buyer's records pertaining to such accounts receivable during normal business hours. Seller shall make prompt payment to Buyer, upon Buyer's request, of the amount of any account receivable of the Division Outstanding on the Closing Date which shall not have been paid prior to the date of such request and which is more than three months past due on the date of such request. In the event of any such payment by Seller, the uncollected account receivable for which Buyer is paid hereunder shall be assigned (without recourse) to Seller, together with any supporting documentation relating thereto, and will be treated by Seller and Buyer as an adjustment to the purchase price hereunder. For administrative convenience, claims by Buyer hereunder shall, to the extent feasible, be aggregated and not submitted to Seller until they exceed $50,000.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CLEVITE INDUSTRIES INC.

By: S/S

Title: S/S

JPI ACQUISITION, INC.

By: S/S

Title: President

L18934 A(LI)
The
Pullman Company

220 South Orange Avenue
Livingston, New Jersey 07039
(201)535-9522
Facsimile (201)535-9837

Henry S. Lager
Senior Vice President
Human Resources

December 4, 1991

Richard A. Miller, Esquire
Gordon-Miller-O'Brien
1208 Plymouth Building
12 South Sixth Street
Minneapolis, Minnesota 55402-5831 VIA TELECOPY

Re: Glenn E. Johnson

Dear Mr. Miller:

This letter responds to the claim for benefits filed by you as the authorized representative of Glenn E. Johnson (the "Claimant") to The Pullman Company Retirement Plan (the "Pullman Plan") on September 9, 1991. In accordance with the administrative claims procedure in the Pullman Plan (Section 9.10), the Committee responds to the claim as follows.

You assert that the Claimant has not been credited with attaining his Early Retirement Age and, as a result, the Claimant will receive a deferred vested retirement benefit (based on a .5% reduction) rather than an early retirement benefit (based, in part, on a .2% reduction). On January 1, 1989, the Claimant began receiving an early retirement benefit based, in part, on a .2% reduction from the Pullman Plan.

The Pullman Plan

On January 1, 1989, The Clevite Plan was merged into the Pullman Plan. The Pullman Plan states in relevant part:

> For purposes of Paragraph (4) of Subsection 6.1(b) of the Plan [Vesting of Nonforfeitable Amounts], the following employees of companies or divisions formerly participating under the Plan or Prior Plans were fully vested in their accrued benefits under the Plan or the applicable Prior Plan as of the dates indicated below, if such employees were not fully vested under the terms of the Plan or the Prior Plan before such date.

Prior Plan	Group of Employees	Date of Full Vesting
Clevite Industries Inc. Hourly Retirement Plan	Employees whose covered employment was terminated pursuant to the sale of the assets of the Engine Parts Division to J.P. Industries, Inc.	February 17, 1987

(The Pullman Plan, Amended and Restated effective January 1, 1989, Schedule L).

Early Retirement Benefit

The Claimant was employed by Clevite Industries Inc. in the Engine Parts Division. The Clevite Industries Inc. Hourly Retirement Plan (the "Clevite Plan") provides:

4.2(a) Eligibility. A Member whose employment with the Company and affiliates terminates on or after he has attained his Early Retirement Age but before his Normal Retirement Age, shall be eligible to receive an early retirement benefit under the Plan.

The Clevite Plan defines the "Company" as Clevite Industries Inc. (Third Amendment of Imperial Clevite Inc. Hourly Retirement Plan, Paragraph 2 (effective July 3, 1986))[1] An "Affiliate" is defined as "any corporation, including the Company, i.e., either a subsidiary corporation or a parent corporation of the Company, which is a member of a 'controlled group' of corporations within the meaning of the Act." (Section 2.1(d))

On February 17, 1987, Clevite Industries Inc. sold the Engine Parts Division to J.P.I. Transportation, Inc. ("J.P.I."). Thus, the Claimant ceased to be employed by Clevite Industries Inc. (the Company) on that date. Further, J.P.I. has never been a member of a controlled group with Clevite Industries Inc. and does not, therefore, meet the definition of an "Affiliate." Consequently, on February 17, 1987, the Claimant ceased to be employed by the Company or any Affiliate of the Company.

As stated above, in order to be eligible for an early retirement benefit, the Claimant's employment with the Company or an Affiliate must have terminated on or after he attained his Early Retirement Age. The Clevite Plan defines "Early Retirement Age" as the Member's age "when he has both attained his 55th birthday (but not his 65th) and

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[1]The Third Amendment changed the definition of "Company," from Imperial Clevite Inc. (Clevite Plan, Section 1.1) to Clevite Industries Inc.

completed at least ten years of Vesting Service." (Section 2.1(s)(2))

The Claimant attained age 55 on June 21, 1985. The Claimant completed ten years of Vesting Service, as defined in the Clevite Plan (Section 3.5), on May 8, 1963. Thus, because the Claimant was terminated after he had attained age 55 and after he had completed 10 years of Vesting Service, he met the eligibility criteria for the early retirement benefit.

The Claimant's benefit commencement date was January 1, 1989. The amount of his early retirement benefit was and continues to be $313.75 per month, calculated in accordance with the terms of the Clevite Plan, as follows:

> 4.2(b) Amount. A Member's monthly early retirement benefit shall be an amount computed in the same manner as a normal retirement benefit [Section 4.1] based upon his Benefit Service and the provisions of the Plan in effect on his Early Retirement Date (Section 2.1(t)(2)], reduced, except as otherwise provided in an applicable Supplement, by one-half of one percent for each complete calendar month by which his first early retirement benefit precedes the first day of the month next following his 65th birthday.

On October 1, 1984, Section 4.2(b) of the Clevite Plan was replaced with the following:

> A Member's monthly early retirement benefit shall be an amount computed in the same manner as a normal retirement benefit based upon his Benefit Service and the provisions of the Plan in effect on his Early Retirement Date, reduced by .2% for each complete calendar month, up to a maximum of 60 months, by which his first early

retirement benefit payment precedes the first day of the month next following his 65th birthday, and also reduced by .5% for each complete calendar month by which his first early retirement benefit payment precedes the first day of the month next following his 60th birthday.

(Amended Supplement One of the Imperial Clevite Inc. Hourly Retirement Plan, Paragraph (j)) Thus, the computation of an early retirement benefit for a Member who has attained Early Retirement Age is based, in part, upon the .2% early retirement benefit reduction.

Attachment "A" to this letter shows the method used to calculate this Claimant's early retirement benefit. The difference between Claimant's early retirement date and his normal retirement date was 78 months. In accordance with the terms of the Clevite Plan described above, his early retirement benefit was calculated by reducing his normal retirement benefit by the .2% early retirement benefit reduction factor for 60 months and by the .5% early retirement benefit reduction factor for the remaining 18 months.

Conclusion

For the reasons set forth above, the Claimant has been credited with and is eligible to receive an early retirement benefit. The Claimant, in fact, began receiving an early retirement benefit based, in part, on a .2% reduction, on January 1, 1989.

Committee Review

If the Committee denies, in whole or in part, a claim for benefits, the Claimant is entitled to petition the Committee in writing for a full and fair review of the denial. (Pullman Plan,

Section 9.10(a)(1)(4) and (b)) Because the Committee's response to this Claimant does not constitute a notice of denial of an early retirement benefit, the Committee's response is not subject to further review.

Sincerely,

S/S

Henry S. Lager

Attachment
cc: Carol A. Mager, Esquire (w/Att.)

ATTACHMENT "A"

THE PULLMAN COMPANY RETIREMENT PLAN

EARLY RETIREMENT BENEFIT WORKSHEET FOR THE FORMER PARTICIPANTS UNDER THE CLEVITE INDUSTRIES INC. HOURLY RETIREMENT PLAN

Glenn E. Johnson	474-28-0924	6/21/30
Employee	Soc. Sec. No.	Birth Date

CREDITED SERVICE:

Credited Service Date	5/8/53
Retirement Date	1/1/89
Benefit Commencement Date	1/1/89
Total Credited Service (max. 35)	33.8

EARLY RETIREMENT FACTOR:

Normal Retirement Date	7/1/95
Early Retirement Date	1/1/89
Difference in months	78 months

Discount	(Up to 60 mos.)	.002 x 60	=	.120
	(Over 60 mos.)	.005 x 12	=	.090
	Total Discount			.210
Early Retirement Factor (1.000 - discount)				7.90

BENEFIT:

Credited Service	x	Benefit Rate	=	Pension Benefit	x	Early Factor	=	Early Benefit
33.8	x	$11.75 (10/86)	=	397.15	x	.790	=	313.75

TOTAL EARLY RETIREMENT BENEFIT:

$313.75 per month for life

The Pullman Company
Henry S. Lager
Senior Vice President
Human Resources

220 South Orange Avenue
Livingston, New Jersey 07039
(201) 535-9522
Facsimile (201) 535-9837

December 4, 1991

Richard A. Miller, Esquire
Gordon-Miller-O'Brien
1208 Plymouth Building
12 South Sixth Street
Minneapolis, Minnesota 55402-5831 VIA TELECOPY

Re: Lloyd L. Betcher

Dear Mr. Miller:

This letter responds to the claim for benefits filed by you as the authorized representative of Lloyd L. Betcher (the"Claimant") to The Pullman Company Retirement Plan (the "Pullman Plan") on September 9, 1991. In accordance with the administrative claims procedure in the Pullman Plan (Section 9.10), the Committee responds to the claim as follows.

You assert that the Claimant has not been credited with attaining his Early Retirement Age and, as a result, the Claimant will receive a deferred vested retirement benefit (based on a .5% reduction) rather than an early retirement benefit (based, in part, on a .2% reduction). On November 1, 1991, the Claimant began receiving a deferred vested retirement benefit from the Pullman Plan.

The Pullman Plan

On January 1, 1989, The Clevite Plan was merged into the Pullman Plan. The Pullman Plan states in relevant part:

> For purposes of Paragraph (4) of Subsection 6.1(b) of the Plan [Vesting of Nonforfeitable Amounts], the following employees of companies or divisions formerly participating under the Plan or Prior Plans were fully vested in their accrued benefits under the Plan or the applicable Prior Plan as of the dates indicated below, if such employees were not fully vested under the terms of the Plan or the Prior Plan before such date.

Prior Plan	Group of Employees	Date of Full Vesting
Clevite Industries Inc. Hourly Retirement Plan	Employees whose covered employment was terminated pursuant to the sale of the assets of the Engine Parts Division to J.P. Industries, Inc.	February 17, 1987

(The Pullman Plan, Amended and Restated effective January 1, 1989, Schedule L).

Early Retirement Benefit

The Claimant was employed by Clevite Industries Inc. in the Engine Parts Division. The Clevite Industries Inc. Hourly Retirement Plan (the "Clevite Plan") provides:

4.2(a) Eligibility. A Member whose employment with the Company and Affiliates terminates on or after he has attained his Early Retirement Age but before his Normal Retirement Age, shall be eligible to receive an early retirement benefit under the Plan.

The Clevite Plan defines the "Company" as Clevite Industries Inc. (Third Amendment of Imperial Clevite Inc. Hourly Retirement Plan, Paragraph 2 (effective July 3, 1986))[1] An "Affiliate" is defined as "any corporation, including the Company, i.e., either a subsidiary corporation or a parent corporation of the company, which is a member of a 'controlled group' of corporations within the meaning of the Act." (Section 2.1 (d))

On February 17, 1987, Clevite Industries Inc. sold the Engine Parts Division to J.P.I. Transportation, Inc. ("J.P.I."). Thus, the Claimant ceased to be employed by Clevite Industries Inc. (the Company) on that date. Further, J.P.I. has never been a member of a controlled group with Clevite Industries Inc. and does not, therefore, meet the definition of an "Affiliate. "Consequently, on February 17, 1987, the Claimant ceased to be employed by the Company or any Affiliate of the Company.

As stated above, in order to be eligible for an early retirement benefit, the Claimant's employment with the Company or an Affiliate must have terminated on or after he attained his Early Retirement Age. The Clevite Plan defines "Early Retirement Age" as the Member's age "when he has both attained his 55th birthday (but not his 65th) and

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[1] The Third Amendment changed the definition of "Company," from Imperial Clevite Inc. (Clevite Plan, Section 1.1) to Clevite Industries Inc.

completed at least ten years of Vesting Service." (Section 2.1(s)(2))

The Claimant did not attain age 55 until October 29,1991. The Claimant's employment terminated on February 17, 1987, before he attained his Early Retirement Age. Thus, he does not qualify to receive an early retirement benefit.

Deferred Vested Retirement Benefit

The Clevite Plan provides:

4.3(a) Eligibility. A Member whose employment with the Company and Affiliates terminates on or after he has attained his Vested Retirement Age but before his Early Retirement Age, shall be eligible to receive a deferred vested retirement benefit under the Plan.

The Clevite Plan defined "Vested Retirement Age" as the member's age "when he has completed ten years of Vesting Service before his Early Retirement Age." (Section 2.1(s)(3)) On August 30,1988, this provision was replaced, effective January 1, 1987, with the following:

> 'Vested Retirement Age' means a Member's age when he has completed ten years of Vesting Service before his Early Retirement Age, except that a Member who is a member of a Participating Group on February 17, 1987, whose employment with the Company is terminated pursuant to the sale of the assets of the Company's Engine Parts Division to J.P. Industries, Inc., and who on February 17, 1987 has not completed ten years of Vesting Service shall be

deemed to attain his Vested Retirement Age on February 17,1987.

(Fourth Amendment of Clevite Industries Inc. Hourly Retirement Plan, Paragraph 4)[2]

The Clevite Plan further provides that monthly deferred vested retirement benefits begin as of the Member's "Vested Retirement Date." (Section 4.3(c)) A Member's Vested Retirement Date is "the first day of any calendar month next following his 55th birthday as of which he makes application for the vested retirement benefit to begin." (Section 2.1(t)(3))

The Claimant is eligible to receive a deferred vested retirement benefit. The Fourth Amendment of the Clevite Industries Inc. Hourly Retirement Plan provided that claimant attained his Vested Retirement Age when his employment with Clevite Industries Inc. terminated. The Claimant attained his 55th birthday on October 29, 1991. Thus, he is eligible to receive a monthly deferred vested retirement benefit, calculated in accordance with the terms of the Clevite Plan (Section 4.3 (b)), and he began to receive such a benefit on November 1,1991. Attachment "A" hereto shows how the Claimant's benefit was calculated.

Conclusion

For the reasons set forth above, the Claimant has not been credited with and is not eligible to receive an early retirement benefit. The Claimant has been credited with attaining his Vested Retirement Age, and, because he has attained his 55th birthday, he is eligible to begin receiving monthly deferred

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[2] This Amendment also changed the definition of the "Company" to The Pullman Company.

vested retirement benefits. In fact, the Claimant began receiving such a benefit on November 1, 1991.

Committee Review

If the Committee denies, in whole or in part, a claim for benefits, the Claimant is entitled to petition the Committee in writing for a full and fair review of the denial. (Pullman Plan, Section 9.10(a)(1)) Because the Committee's response to this Claimant constitutes a notice of denial of an early retirement benefit, the Claimant may submit his claim for further review by the Committee.

Within 60 days of receipt of this notice of claim denial, the Claimant may petition the Committee in writing for a full and fair review of the denial. The Claimant shall have the opportunity to review pertinent documents and to submit issues and comments in writing to the Committee. The Committee shall review the denial and shall communicate its decision and the reasons therefor to the Claimant in writing within 60 days of receipt of the petition. In special circumstances, the Committee may extend the response period for up to an additional 60 days, in which event it shall notify the Claimant in writing prior to the commencement of the extension. (Pullman Plan, Section 9.10(b))

Sincerely,

Henry Lager

Attachment
cc: Carol A. Mager, Esquire

ATTACHMENT "A"
THE PULLMAN COMPANY RETIREMENT PLAN
DEFERRED VESTED BENEFIT WORKSHEET
FOR THE FORMER PARTICIPANTS UNDER THE CLEVITE INDUSTRIES INC. HOURLY RETIREMENT PLAN

Lloyd L. Betcher	469-38-3915	10/29/36
Employee	Soc. Sec. No.	Birth Date

CREDITED SERVICE:

Credited Service Date	5/7/56
Actual Retirement Date	11/1/91
Benefit Commencement Date	11/1/91
Total Credited Service (max. 35)	30.8

DEFERRED VESTED RETIREMENT FACTOR:

Normal Retirement Date	11/1/2001
Deferred Vested Retirement Date	11/1/91
Difference in months	120 months

Discount (Up to 120 mos.) .005 x 120 = .60
Deferred Vested Benefit Factor (1.000 - discount) .40

BENEFIT:

Credited Service	x	Benefit Rate	Pension Benefit	x	Deferred Vested Factor	Deferred Vested Benefit
30.8	x	$11.75 (10/86)	361.90	x	.40	= 114.76

TOTAL DEFERRED VESTED RETIREMENT BENEFIT:
$144.76 per month for life

The Pullman Company
Henry S. Lager
Senior Vice President
Human Resources

220 South Orange Avenue
Livingston, New Jersey 07039
(201) 535-9522
Facsimile (201) 535-9837

December 4, 1991

Richard A. Miller, Esquire
Gordon-Miller-O'Brien
1208 Plymouth Building
12 South Sixth Street
Minneapolis, Minnesota 55402-5831 VIA TELECOPY

Re: Lawrence F. Possehl

Dear Mr. Miller:

This letter responds to the claim for benefits filed by you as the authorized representative of Lawrence F. Possehl (the"Claimant") to The Pullman Company Retirement Plan (the "Pullman Plan") on September 9, 1991. In accordance with the administrative claims procedure in the Pullman Plan (Section 9.10), the Committee responds to the claim as follows.

You assert that the Claimant has not been credited with attaining his Early Retirement Age and, as a result, the Claimant will receive a deferred vested retirement benefit (based on a .5% reduction) rather than an early retirement benefit (based, in part, on a .2% reduction). On November 22, 1988, the Claimant received a lump sum distribution of his normal retirement benefit in the amount of $1,542.

The Pullman Plan

On January 1, 1989, The Clevite Plan was merged into the Pullman Plan. The Pullman Plan states in relevant part:

> For purposes of Paragraph (4) of Subsection 6.1(b) of the Plan [Vesting of Nonforfeitable Amounts], the following employees of companies or divisions formerly participating under the Plan or Prior Plans were fully vested in their accrued benefits under the Plan or the applicable Prior Plan as of the dates indicated below, if such employees were not fully vested under the terms of the Plan or the Prior Plan before such date.

Prior Plan	Group of Employees	Date of Full Vesting
Clevite Industries Inc. Hourly Retirement Plan	Employees whose covered employment was terminated pursuant to the sale of the assets of the Engine Parts Division to J.P. Industries, Inc.	February 17, 1987

(The Pullman Plan, Amended and Restated effective January 1,1989, Schedule L).

Early Retirement Benefit

The Claimant was employed by Clevite Industries Inc. in the Engine Parts Division. The Clevite Industries Inc. Hourly Retirement Plan (the "Clevite Plan") provides:

4.2(a) Eligibility. A Member whose employment with the Company and Affiliates terminates on or after he has attained his Early Retirement Age but before his Normal Retirement Age, shall be eligible to receive an early retirement benefit under the Plan.

The Clevite Plan defines the "Company" as Clevite Industries Inc. (Third Amendment of Imperial Clevite Inc. Hourly Retirement Plan, Paragraph 2 (effective July 3, 1986))[1] An "Affiliate" is defined as "any corporation, including the company, i.e., either a subsidiary corporation or a parent corporation of the Company, which is a member of a 'controlled group' of corporations within the meaning of the Act." (Section 2.1(d))

On February 17, 1987, Clevite Industries Inc. sold the Engine Parts Division to J.P.I. Transportation, Inc. ("J.P.I."). Thus, the Claimant ceased to be employed by Clevite Industries Inc. (the Company) on that date. Further, J.P.I. has never been a member of a controlled group with Clevite Industries Inc. and does not, therefore, meet the definition of an "Affiliate." Consequently, on February 17, 1987, the Claimant ceased to be employed by the Company or any Affiliate of the Company.

As stated above, in order to be eligible for an early retirement benefit, the Claimant's employment must have terminated on or after he attained his Early Retirement Age. The Claimant will attain age 55 on May 29, 1992. Thus, the Claimant's employment terminated before he will attain his Early Retirement Age. Accordingly, he does not qualify to receive an early retirement benefit.

---

[1] The Third Amendment changed the definition of "Company," from Imperial Clevite Inc. (Clevite Plan, Section 1.1) to Clevite Industries Inc.

The Claimant was hired on November 28, 1983, and, therefore, could not have completed ten years of Vesting Service for purposes of receiving an early retirement benefit until on or after November 28, 1993. The Claimant's employment terminated on February 19, 1987, before he attained his Early Retirement Age. Thus, he did not qualify to receive an early retirement benefit.

Deferred Vested Retirement Benefit

The Clevite Plan provides:

> 4.3(a) Eligibility. A Member whose employment with the Company and Affiliates terminates on or after he has attained his Vested Retirement Age but before his Early Retirement Age, shall be eligible to receive a deferred vested retirement benefit under the Plan.

The Clevite Plan defined "Vested Retirement Age" as the member's age "when he has completed ten years of Vesting Service before his Early Retirement Age." (Section 2.1(s)(3)) On August 30,1988, this provision was replaced, effective January 1, 1987, with the following:

> 'Vested Retirement Age' means a Member's age when he has completed ten years of Vesting Service before his Early Retirement Age, except that a Member who is a member of a Participating Group on February 17, 1987, whose employment with the Company is terminated pursuant to the sale of the assets of the Company's Engine Parts Division to J.P. Industries, Inc., and who on February 17, 1987 has not completed ten years of Vesting Service shall be

> deemed to attain his Vested Retirement Age on February 17,1987.

(Fourth Amendment of Clevite Industries Inc. Hourly Retirement Plan, Paragraph 4)[2]

The Clevite Plan further provides that monthly deferred vested retirement benefits begin as of the Member's "Vested Retirement Date." (Section 4.3(c)) A Member's Vested Retirement Date is "the first day of any calendar month next following his 55th birthday as of which he makes application for the vested retirement benefit to begin." (Section 2.1(t)(3))

The Fourth Amendment of the Clevite Industries Inc. Hourly Retirement Plan provided that claimant attained his Vested Retirement Age when his employment with Clevite Industries Inc. terminated. However, because the Actuarially Equivalent lump sum value of the Claimant's benefit upon vesting was less than $3500, he was paid a lump sum cash payment (discussed below).

Lump Sum Distribution

As stated above, on August 30, 1988, the Claimant was deemed to have attained his Vested Retirement Age effective January 1, 1987.

The Clevite Plan provides:

> 4.9 Payment of Small Amounts. If the Actuarially Equivalent lump sum value of any retirement benefit otherwise payable under the Plan is less than $1,750,

---

[2] This Amendment also changed the definition of the "Company" to The Pullman Company.

the Committee may direct that such lump sum value be paid in full discharge of all liability under the Plan.

This provision of the Clevite Plan was amended, effective January 1, 1985, to increase the maximum Actuarially Equivalent lump sum value from $1,750 to $3,500. (Fourth Amendment of Clevite Industries Inc. Hourly Retirement Plan, Paragraph 8)

The Actuarially Equivalent lump sum value of the Claimant's normal retirement benefit was $1542. Thus, on November 22, 1988, the Claimant was paid a lump sum cash payment of $1542. Attachment "A" hereto shows how the Actuarially Equivalent lump sum value was calculated.

Conclusion

For the reasons set forth above, the Claimant has not been credited with and is not eligible to receive an early retirement benefit. The Claimant was credited with attaining his Vested Retirement Age, and, because the Actuarially Equivalent lump sum value of his normal retirement benefit was less than $3500, he received a lump sum distribution.

The Committee's response to this claim for benefits does not constitute a waiver of any right in any form regarding the untimeliness of the claim. The Committee notes that the Claimant received a lump sun distribution on November 22, 1988. Further, the Claimant's union, which was represented by the Claimant's present counsel, acknowledged that, as early as September 1988, it was aware that employees such as the Claimant were not eligible to receive an early retirement benefit as a result of the sale of the Clevite Engine Parts Division. Thus, any dispute with the benefit received by the

Claimant should have been raised contemporaneously with the receipt of the benefit.

Committee Review

If the Committee denies, in whole or in part, a claim for benefits, the Claimant is entitled to petition the Committee in writing for a full and fair review of the denial. (Pullman Plan, Section 9.10(a)(1)) Because the Committee's response to this Claimant constitutes a notice of denial of an early retirement benefit, the Claimant may submit his claim for further review by the Committee.

Within 60 days of receipt of this notice of claim denial, the Claimant may petition the Committee in writing for a full and fair review of the denial. The Claimant shall have the opportunity to review pertinent documents and to submit issues and comments in writing to the Committee. The Committee shall review the denial and shall communicate its decision and the reasons therefor to the Claimant in writing within 60 days of receipt of the petition. In special circumstances, the Committee may extend the response period for up to an additional 60 days, in which event it shall notify the Claimant in writing prior to the commencement of the extension. (Pullman Plan, Section 9.10(b))

Sincerely,

Henry S. Lager

S/S

Attachment
cc: Carol A. Mager, Esquire

ATTACHMENT "A"

THE PULLMAN COMPANY RETIREMENT PLAN

LUMP SUM DISTRIBUTION WORKSHEET FOR THE FORMER PARTICIPANTS UNDER TEE CLEVITE INDUSTRIES INC. HOURLY RETIREMENT PLAN

Lawrence Possehl	475-28-7543	10/8/31
Employee	Soc. Sec. No.	Birth Date

CREDITED SERVICE:

Credited Service Date	11/28/83
Actual Retirement Date	11/1/96
Benefit Commencement Date	9/20/88
Total Credited Service (max. 35)	2.7

ACCRUED BENEFIT:

Credited Service	x	Benefit Rate	=	Accrued Benefit
2.76	x	$11.75 (10/86)	=	$31.73

TOTAL NORMAL RETIREMENT BENEFIT:

$31.73 per month for life

CONVERSION OF NORMAL RETIREMENT BENEFIT INTO A PRESENT DAY LUMP SUM AMOUNT (ACTUARIALLY EQUIVALENT LUMP SUM BENEFIT):

Interest Rate: 8.25% PBGC

Mortality Table: 1984 Unisex Pensioner

Age on Distribution Date (rounded to whole years) 57

Actuarially Equivalent Lump Sum Amount of Normal Retirement Benefit Payable on Normal Retirement Date
(Accrued Benefit x Annuity Purchase Factor)

AB $ 31.73 x APF 113.5844 = 3,604.03

Number of Whole Years from Distribution Date to Normal Retirement Date 8

Discount Factor to determine what $1 at Normal Retirement Date is worth on the Distribution Date 42.7934%

Actuarially Equivalent Lump SUM Amount (rounded to whole dollars)
Discount Factor x NRD lump sum = $1,542.00

The Pullman Company
Henry S. Lager
Senior Vice President
Human Resources

220 South Orange Avenue
Livingston, New Jersey 07039
(201) 535-9522
Facsimile (201) 535-9837

December 4, 1991

Richard A. Miller, Esquire
Gordon-Miller-O'Brien
1208 Plymouth Building
12 South Sixth Street
Minneapolis, Minnesota 55402-5831 VIA TELECOPY

Re: Richard H. Hunger

Dear Mr. Miller:

This letter responds to the claim for benefits filed by you as the authorized representative of Richard H. Hunger (the"Claimant") to The Pullman Company Retirement Plan (the "Pullman Plan") on September 9, 1991. In accordance with the administrative claims procedure in the Pullman Plan (Section 9.10), the Committee responds to the claim as follows.

You assert that the Claimant has not been credited with attaining his Early Retirement Age and, as a result, the Claimant will receive a deferred vested retirement benefit (based on a .5% reduction) rather than an early retirement benefit (based, in part, on a .2% reduction). On November 22, 1988, the Claimant received a lump sum distribution of his normal retirement benefit in the amount of $3,479.

The Pullman Plan

On January 1, 1989, The Clevite Plan was merged into the Pullman Plan. The Pullman Plan states in relevant part:

> For purposes of Paragraph (4) of Subsection 6.1(b) of the Plan [Vesting of Nonforfeitable Amounts], the following employees of companies or divisions formerly participating under the Plan or Prior Plans were fully vested in their accrued benefits under the Plan or the applicable Prior Plan as of the dates indicated below, if such employees were not fully vested under the terms of the Plan or the Prior Plan before such date.

Prior Plan	Group of Employees	Date of Full Vesting
Clevite Industries Inc. Hourly Retirement Plan	Employees whose covered employment was terminated pursuant to the sale of the assets of the Engine Parts Division to J.P. Industries, Inc.	February 17, 1987

(The Pullman Plan, Amended and Restated effective January 1,1989, Schedule L).

Early Retirement Benefit

The Claimant was employed by Clevite Industries Inc. in the Engine Parts Division. The Clevite Industries Inc. Hourly Retirement Plan (the "Clevite Plan") provides:

4.2(a) Eligibility. A Member whose employment with the Company and Affiliates terminates on or after he has attained his Early Retirement Age but before his Normal Retirement Age, shall be eligible to receive an early retirement benefit under the Plan.
The Clevite Plan defines "Early Retirement Age" as the Member's age "when he has both attained his 55th birthday (but not his 65th) and completed at least ten years of Vesting Service. "(Section 2.1(s)(2))

The Claimant ceased to be both a "Member" and employed with the "Company and Affiliates" on February 17, 1987. On that date, Clevite Industries Inc. sold the Engine Parts Division to J.P.I. Transportation, Inc. ("J.P.I.").

The Clevite Plan defines "Member" as "Participant and Inactive Participant and any former employee (including a former Industrial Group employee) who is entitled to a vested benefit under the Plan." (Section 2.1(k)) In order to qualify as a "Participant," the individual must be an "Employee" of an "Employer." (Section 2.1(n)) An "Employee," in turn, is defined as "any person employed by an Employer or a nonparticipating Affiliate." (Section 2.1(h)) The definition of "Employer" provides, in relevant part, "any Affiliate which elects to become a party to the Plan by adopting the Plan for the benefit of its eligible Employees." (Section 2.1(i)) Thus, to qualify as a Member, the Claimant must be employed by an Affiliate.

An "Affiliate" is defined as "any corporation, including the Company, i.e., either a subsidiary corporation or a parent corporation of the Company, which is a member of a 'controlled group' of corporations within the meaning of the Act." (Section 2.1(d)) The Clevite Plan defines the "Company"

as Clevite Industries Inc. (Third Amendment of Imperial Clevite Inc. Hourly Retirement Plan, Paragraph 2 (effective July 3, 1986)) [3]

On February 17, 1987, the Claimant ceased to be employed by Clevite Industries Inc. and became employed by J.P.I. Consequently, the Claimant no longer was employed by the Company. Further, because J.P.I. has never been a member of a controlled group with Clevite Industries Inc., the Claimant's new employer does not meet the definition of an "Affiliate."

In sum, on February 17, 1987, the Claimant ceased to be employed by the Company. In addition he ceased to be a Member because he was not employed by an Affiliate. Thus, the Claimant's employment with the Company and Affiliates terminated on February 17, 1987.

As stated above, in order to be eligible for an early retirement benefit, the Claimant's employment must have terminated on or after he attained his Early Retirement Age. The Claimant will attain age 55 on May 29, 1992. Thus, the Claimant's employment terminated before he will attain his Early Retirement Age. Accordingly, he does not qualify to receive an early retirement benefit.

Deferred Vested Retirement Benefit

The Clevite Plan provides:

> 4.3(a) Eligibility. A Member whose employment with the Company and Affiliates terminates on or

[3] The Third Amendment changed the definition of "Company," from Imperial Clevite Inc. (Clevite Plan, Section 1.1) to Clevite Industries Inc.

> after he has attained his Vested Retirement Age but before his Early Retirement Age, shall be eligible to receive a deferred vested retirement benefit under the Plan.

The Clevite Plan defined "Vested Retirement Age" as the member's age "when he has completed ten years of Vesting Service before his Early Retirement Age." (Section 2.1(s)(3)) On August 30,1988, this provision was replaced, effective January 1, 1987, with the following:

> 'Vested Retirement Age' means a Member's age when he has completed ten years of Vesting Service before his Early Retirement Age, except that a Member who is a member of a Participating Group on February 17, 1987, whose employment with the Company is terminated pursuant to the sale of the assets of the Company's Engine Parts Division to J.P. Industries, Inc., and who on February 17, 1987 has not completed ten years of Vesting Service shall be deemed to attain his Vested Retirement Age on February 17,1987.

(Fourth Amendment of Clevite Industries Inc. Hourly Retirement Plan, Paragraph 4)[4]

The Clevite Plan further provides that monthly deferred vested retirement benefits begin as of the Member's "Vested Retirement Date." (Section 4.3(c)) A Member's Vested Retirement Date is "the first day of any calendar month next following his 55th birthday as of which he makes application for the vested retirement benefit to begin." (Section 2.1(t)(3))

---

[4] This Amendment also changed the definition of the "Company" to The Pullman Company.

On the Claimant's 55th birthday (May 29, 1992), he would have become eligible to receive a deferred vested retirement benefit because the Fourth Amendment of the Clevite Industries Inc. Hourly Retirement Plan provided that he had attained his Vested Retirement Age on the date his employment with Clevite Industries Inc. terminated. However, because the Actuarially Equivalent lump sum value of the Claimant's benefit upon vesting was less than $3500, he was paid a lump sum cash payment (discussed below).

Lump Sum Distribution

As stated above, on August 30, 1988, the Claimant was deemed to have attained his Vested Retirement Age effective January 1, 1987.

The Clevite Plan provides:

> 4.9 Payment of Small Amounts. If the Actuarially Equivalent lump sum value of any retirement benefit otherwise payable under the Plan is less than $1,750, the Committee may direct that such lump sum value be paid in full discharge of all liability under the Plan.

This provision of the Clevite Plan was amended, effective January 1, 1985, to increase the maximum Actuarially Equivalent lump sum value from $1,750 to $3,500. (Fourth Amendment of Clevite Industries Inc. Hourly Retirement Plan, Paragraph 8)

The Actuarially Equivalent lump sum value of the Claimant's normal retirement benefit was $3479. Thus, on November 22, 1988, the Claimant was paid a lump sum cash

payment of $3479. Attachment "A" hereto shows how the Actuarially Equivalent lump sum value was calculated.

Conclusion

For the reasons set forth above, the Claimant has not been credited with and is not eligible to receive an early retirement benefit. The Claimant was credited with attaining his Vested Retirement Age, and, because the Actuarially Equivalent lump sum value of his normal retirement benefit was less than $3500, he received a lump sum distribution.

The Committee's response to this claim for benefits does not constitute a waiver of any right in any form regarding the untimeliness of the claim. The Committee notes that the Claimant received a lump sun distribution on November 22, 1988. Further, the Claimant's union, which was represented by the Claimant's present counsel, acknowledged that, as early as September 1988, it was aware that employees such as the Claimant were not eligible to receive an early retirement benefit as a result of the sale of the Clevite Engine Parts Division. Thus, any dispute with the benefit received by the Claimant should have been raised contemporaneously with the receipt of the benefit.

Committee Review

If the Committee denies, in whole or in part, a claim for benefits, the Claimant is entitled to petition the Committee in writing for a full and fair review of the denial. (Pullman Plan, Section 9.10(a)(1)) Because the Committee's response to this Claimant constitutes a notice of denial of an early retirement benefit, the Claimant may submit his claim for further review by the Committee.

Within 60 days of receipt of this notice of claim denial, the Claimant may petition the Committee in writing for a full and fair review of the denial. The Claimant shall have the opportunity to review pertinent documents and to submit issues and comments in writing to the Committee. The Committee shall review the denial and shall communicate its decision and the reasons therefor to the Claimant in writing within 60 days of receipt of the petition. In special circumstances, the Committee may extend the response period for up to an additional 60 days, in which event it shall notify the Claimant in writing prior to the commencement of the extension. (Pullman Plan, Section 9.10(b))

Sincerely,

S/S

Henry S. Lager

Attachment
cc: Carol A. Mager, Esquire

ATTACHMENT "A"

THE PULLMAN COMPANY RETIREMENT PLAN

LUMP SUM DISTRIBUTION WORKSHEET FOR THE FORMER PARTICIPANTS UNDER TEE CLEVITE INDUSTRIES INC. HOURLY RETIREMENT PLAN

Richard H. Hunger	482-36-8507	5/29/37
Employee	Soc. Sec. No.	Birth Date

CREDITED SERVICE:

Credited Service Date	10/26/77
Actual Retirement Date	6/1/2002
Benefit Commencement Date	9/20/88
Total Credited Service (max. 35)	8.6

ACCRUED BENEFIT:

Credited Service	x	Benefit Rate	=	Accrued Benefit
8.6	x	$11.75 (10/86)	=	$101.05

TOTAL NORMAL RETIREMENT BENEFIT:

$101.05 per month for life

CONVERSION OF NORMAL RETIREMENT BENEFIT INTO A PRESENT DAY LUMP SUM AMOUNT (ACTUARIALLY EQUIVALENT LUMP SUM BENEFIT):

Interest Rate: 8.25% PBGC

Mortality Table: 1984 Unisex Pensioner

Age on Distribution Date (rounded to whole years) 52

Actuarially Equivalent Lump Sum Amount of Normal Retirement Benefit Payable on Normal Retirement Date
(Accrued Benefit x Annuity Purchase Factor)

AB $ 101.05 x APF 122.1544 = 12,343.70

Number of Whole Years from Distribution Date to Normal Retirement Date 13

Discount Factor to determine what $1 at Normal Retirement Date is worth on the Distribution Date 28.1844%

Actuarially Equivalent Lump SUM Amount (rounded to whole dollars)
Discount Factor x NRD lump sum = $3,479.00

AGREEMENT AND PLAN OF MERGER
AMONG
THE PULLMAN COMPANY
PCII ACQUISITION COMPANY
AND
CLEVITE INDUSTRIES INC.

Dated as of May 23, 1987

AGREEMENT AND PLAN OF MERGER

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ANNEX A - Certain Conditions of the Offer

ANNEX B - Certificate of incorporation of Clevite industries Inc.

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of May 23,1987 (the "Agreement"), among The Pullman Company, a Delaware Corporation (the "Parent"), PCII Acquisition Company, a Delaware corporation and a wholly owned subsidiary (the "Subsidiary") of the Parent, and Clevite Industries Inc., a Delaware corporation (the "Company").

WHEREAS, the Boards of Directors of the Parent, the Subsidiary and the Company have approved the acquisition of the Company by the Subsidiary, and in furtherance of such acquisition the Subsidiary proposes to make a tender offer to purchase for cash (the "Offer") all of the Company's issued and outstanding shares of Common Stock, par value $0.01 per share, together with the associated Common Stock Purchase Rights, and Nonvoting Common Stock, par value $0.01 per share, at a price of $17.50 per share (and, in the case of Common Stock, the accompanying Right) net to the seller, and the Board of Directors of the Company has approved the Offer and recommended that it be accepted by stockholders of the Company;

WHEREAS, the Boards of Directors of the Parent, the Subsidiary and the Company have approved the merger of the Subsidiary into the Company (the "Merger") following expiration of the Offer, upon the terms and subject MO the conditions set forth herein;

NOW/THEREFORE, in consideration of the representations, warranties and agreements herein contained, the parties hereto agree as follows:

ARTICLE I
THE TENDER OFFER

1.01. The Offer. So long as none of the events or occurrences set forth in paragraphs (a) through (h) of Annex A to this Agreement shall have occurred, the Subsidiary shall as promptly as practicable (but in no event later than the latest date provided pursuant to Rule 14d-2(b) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) commence a tender offer (the "Offer") to purchase for cash (i) all outstanding shares of the Company's Common Stock, $0.01 par value per share (the "Common Stock"), together with the accompanying Common Stock Purchase Rights (the "Rights") issued pursuant to the Company's Rights Agreement dated as of December 17, 1986 with Harris Trust and Savings Bank, as amended (the Common Stock and the accompanying Rights are referred to as the "Common Shares"), (ii) all outstanding shares of the Company's Nonvoting Common Stock, $0.01 par value per share (the "Nonvoting Stock" and together with the Common Shares the "Shares"), and (iii) all outstanding warrants issued pursuant to the Company's Warrant Agreement dated as of June 30, 1986 with Harris Trust and Savings Bank as Warrant Agent (the "Warrants"), at a price of $17.50 per Share and $1.55 per Warrant. The obligation of the Subsidiary to accept for payment and to pay for any Shares and Warrants tendered shall be subject only to the conditions set forth in Annex A hereto. The Subsidiary shall accept for payment and pay for Shares and Warrants properly tendered pursuant to the Offer and not withdrawn as promptly as practicable after the satisfaction of such conditions, provided that the Subsidiary may from time to time extend the term of the Offer for not more than ten business days after the later of the 20th business day after the commencement of the Offer and the date on which all such conditions shall first have been satisfied. The Company hereby consents to the Offer and represents that the

Board of Directors of the Company as part of their approval of this Agreement has by resolution approved by all of the directors present at the meeting the making of the Offer and recommended acceptance thereof by the stockholders of the Company. Subject to the fiduciary duty of the Board of Directors as advised by counsel, the Board of Directors of the Company will not rescind such recommendation. The Company hereby agrees to prepare and, after review by the Parent, to file with the Securities and Exchange Commission (the "SEC") contemporaneously with the commencement of the Offer a Solicitation/Recommendation Statement on Schedule 14D-9 (the "Schedule 14D-9") containing such recommendation. In connection with the Offer, the Company will promptly furnish the Subsidiary with mailing labels, security position listings and any available listing on computer file containing the names and addresses of the record holders of the Shares and Warrants as of a recent date, and shall furnish the Subsidiary with such additional information and assistance as the Subsidiary or its agents may reasonably request in connection with communicating the Offer to the stockholders of the Company. If a higher per Share price than $17.50 is paid for any Shares in the Offer, the parties agree that all references to "$17.50" in subsequent articles of this Agreement shall automatically become references to the highest per Shire price paid in the Offer.

1.02. Directors. As promptly as legally permitted upon the acceptance for payment by the Subsidiary of a majority of the issued and outstanding Shares (whether pursuant to this Agreement or otherwise acquired) and from time to time as additional Shares are accepted for payment or otherwise acquired by the Subsidiary, the Subsidiary (or its affiliate) shall be entitled to designate at least such number of directors, rounded up to the next full number, on the Board of Directors of the Company as will give the Subsidiary

representation on the Board of Directors of the Company equal to at least that number of directors which equals the product of the total number of directors on the Company's Board of Directors (giving effect to the directors elected pursuant to this sentence) multiplied by the percentage that the number of Shares so accepted for payment by the Subsidiary bears to the number of such Shares outstanding, and the Company shall, at such time, promptly use its best efforts to cause the Subsidiary's designees to be so elected. These efforts shall, if necessary, include any amendments to the Company's By-Laws needed to cause the Subsidiary's designees to be so elected including increasing the number of directors. The directors designated by the Subsidiary shall, subject to their fiduciary duty to the Company and its stockholders, cause the Company to fulfill its obligations pursuant to this Agreement. Prior to any such election or designation, the Company shall take such actions as may be required pursuant to Rule 14f-1 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the Parent will promptly furnish to the Company any information in its possession requested by the Company in connection therewith.

ARTICLE II
THE MERGER

2.01. The Merger. (a) As promptly as practicable following the consummation or termination of the Offer, in accordance with the provisions of this Agreement and the General Corporation Law of the State of Delaware (the "GCL"), at the Effective Time (as defined in Section 2.05), the Subsidiary shall be merged with and into the Company, and the Company shall be the surviving corporation (hereinafter sometimes called the "Surviving Corporation") and shall continue its corporate existence under the laws of the State of Delaware. At the Effective Time the separate existence of the Subsidiary shall cease. Notwithstanding this Section 2.01, the

Parent may elect, instead of merging the Subsidiary into the Company, to merge the Company into the Subsidiary or another direct or indirect wholly owned subsidiary of the Parent, provided that the Company shall not be deemed to have breached any of its representations and warranties herein solely by reason of such election and the resulting effects on the Company. In such event, the parties agree to execute an appropriate amendment to this Agreement in order to reflect the foregoing and to provide that the Subsidiary or such other subsidiary shall be the surviving corporation and will continue under the Company's present name.

(b) The Surviving Corporation shall retain the name of the Company and shall possess all the rights, privileges, immunities, power and purposes of the Subsidiary and the Company and shall by operation of law assume and be liable for all the liabilities, obligations and penalties of the Company and the Subsidiary.

2.02. Certificate of Incorporation. The Certificate of Incorporation of the Surviving Corporation from and after the Effective Time shall be amended as set forth in Annex B attached hereto until thereafter amended in accordance with provisions thereof and as provided by law.

2.03. By-Laws. The By-Laws of the Subsidiary in effect immediately prior to the Effective Time shall be the By-Laws of the Surviving Corporation until thereafter amended, altered or repealed as provided therein.

2.04. Directors and Officers. The directors of the Subsidiary immediately prior to the Effective Time shall be the directors of the Surviving Corporation, each to hold office in

accordance with the Certificate of Incorporation and By-Laws of the Surviving Corporation, and the officers of the Company immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their successors are duly elected.

2.05. Effective Time. The Merger shall become effective at the time that a properly executed certificate of merger (the "Certificate of Merger"), together with any other documents required by law to effectuate the Merger shall be filed and recorded with the Secretary of State of the State of Delaware in accordance with Sections 103 and 251 of the GCL.

2.06. Further Assurances. If at any time after the Effective Time the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of the Company acquired or to be acquired as a result of the Merger, or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation and its proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of the Company, all such deeds, bills of sale, assignments and assurances and do, in the name and on behalf of the Company, all such other acts and things necessary, desirable or proper to vest, perfect or confirm its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of the Company acquired or to be acquired as a result of the Merger and otherwise to carry out the purpose of this Agreement.

ARTICLE III
CONVERSION OF SHARES

3.01. Shares. (a) Each Share issued and outstanding immediately prior to the Effective Time (except for (i) Shares then owned beneficially or of record by the Parent or the Subsidiary, (ii) Shares held in the treasury of the Company, and (iii) Dissenting Shares, as hereinafter defined) shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive $17.50 in cash payable to the holder thereof, without interest thereon, upon surrender of the certificate representing such Share.

(b) Each Share issued and outstanding immediately prior to the Effective Time which is then owned beneficially or of record by the Parent or the Subsidiary shall, by virtue of the Merger and without any action on the part of the holder thereof, be canceled and retired and cease to exist, without any conversion thereof.

(c) Each Share held in the Company's treasury immediately prior to the Effective Time shall, by virtue of the Merger, be canceled and retired and cease to exist, without any conversion thereof.

(d) The holders of certificates representing Shares shall cease to have any rights as stockholders of the Company or as owners of Rights, except such rights, if any, as they may have pursuant to the GCL, and, except as aforesaid, their sole right shall be the right to receive cash as aforesaid.

3.02. Preferred Shares. Each share of the Senior Preferred Stock, par value $.01 per share, and Series A Preferred Stock, par value $.01 per share, of the Company (collectively, the "Preferred Shares"), issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive the Liquidation Value thereof (as defined in the Company's Certificate of Incorporation) determined as of the Effective Time in cash payable to the holder thereof, without interest thereon, upon surrender of the certificate representing such Preferred Share.

3.03. Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, Shares and Preferred Shares which are outstanding immediately prior to the Effective Time and which are held by stockholders who have not voted such Shares or Preferred Shares in favor of the approval and adoption of the Merger Agreement and who shall have delivered a written demand for appraisal of such Shares or Preferred Shares in the manner provided in Section 262 of the GCL ("Dissenting Shares") shall not be converted into or be exchangeable for the right to receive the consideration provided in Section 3.01(a) or 3.02, as the case may be, of this Agreement, but the holders thereof shall be entitled to payment of the appraised value of such shares in accordance with the provisions of Section 262 of the GCL; provided, however, that (i) if any holder of Dissenting Shares shall subsequently deliver a written withdrawal of his demand for appraisal of such Shares or Preferred Shares (with the written approval of the Company, if such withdrawal is not tendered within 60 days after the Effective Time), or (ii) if any holder fails to perfect or loses his appraisal rights as provided in such Section 262, or (iii) if neither any holder of Dissenting Shares nor the Surviving Corporation has filed a petition demanding a determination of the value of all Dissenting Shares within the

time provided in Section 262 of the GCL, such holder or holders (as the case may be) shall forfeit the right to appraisal of such shares and such shares shall thereupon be deemed to have been converted into and to have become exchangeable for, as of the Effective Time, the right to receive the consideration provided in Section 3.01(a) or 3.02, as the case may be, of this Agreement, without any interest thereon.

3.04. Subsidiary Common Stock. Each share of common stock, par value $.01 per share, of the Subsidiary (the "Subsidiary Common Stock"), issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and exchangeable for 7,500 fully paid and nonassessable shares of common stock, par value $.01 per share, of the Surviving Corporation ("Surviving Corporation Common Stock"). From and after the Effective Time, each outstanding certificate theretofore representing shares of Subsidiary Common Stock shall be deemed for all purposes to evidence ownership of and to represent the number of shares of Surviving Corporation Common Stock into which such shares of Subsidiary Common Stock shall have been converted. Promptly after the Effective Time, the Surviving Corporation shall issue to the Parent a stock certificate or certificates representing 7,500,000 shares of Surviving Corporation Common Stock in exchange for the certificate or cates which formerly represented shares of Subsidiary Common Stock, which shall be canceled.

3.05. Exchange of Shares and Preferred Shares.

(a) At the Effective Time, the Subsidiary shall deposit intrust with a bank or trust company designated by the Subsidiary having a combined capital and surplus of at least $100 million (the "Exchange Agent"), cash in an aggregate

amount equal to the sum of (i) the product of (A) the number of Shares issued and outstanding at the Effective Time (other than any such shares owned beneficially or of record by the Parent or any subsidiary of the Parent, Shares held in the treasury of the Company and Dissenting Shares), and (B)$17.50 and (ii) the product of (A) the number of Preferred Shares issued and outstanding at the Effective Time (other than dissenting Shares) and (B) the Liquidation Value thereof (such amount being hereinafter referred to as the "Exchange Fund"). The Exchange Agent shall, pursuant to irrevocable instructions, make the payments provided for in Sections 3.01(a) and 3.02 of this Agreement out of the Exchange Fund. The Exchange Agent may invest portions of the Exchange Fund as the Parent directs, provided that substantially all such investments shall be in obligations of or guaranteed by the United States of America, in commercial paper obligations receiving the highest rating from either Moody's Investors Services, Inc. or Standard & Poor's Corporation, or in certificates of deposit, bank repurchase agreements or banker's acceptances of commercial banks with capital exceeding $100,000,000. The Exchange Fund shall not be used for any other purpose, except as provided in this Agreement and in the Exchange Agreement.

(b) Promptly after the Effective Time the Exchange Agent shall mail to each record holder, as of the Effective Time, of an outstanding certificate or certificates which immediately prior to the Effective Time represented Shares or Preferred Shares (the "Certificates") a form letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent) and instructions for use in effecting the surrender of the Certificates for payment therefor. Upon surrender to the Exchange Agent of a Certificate, together with such letter of

transmittal duly executed, the holder of such Certificate representing Shares shall be entitled to receive in exchange therefor cash in an amount equal to the product of the number of Shares represented by such Certificate and $17.50, and the holder of such Certificate representing Preferred Shares shall be entitled to receive in exchange therefor cash in an amount equal to the product of the number of Preferred Shares represented by such Certificate and the Liquidation Value thereof and such Certificate shall forthwith be canceled. No interest will be paid or accrued on the cash payable upon the surrender of the Certificates. If payment is to be made to a person other than the person in whose name the Certificate surrendered is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such payment shall pay any transfer or other taxes required by reason of the payment to a person other than the registered holder of the Certificate surrendered or establish to the satisfaction of the Exchange Agent and the Surviving Corporation that such tax has been paid or is not applicable. Until surrendered in accordance with the provisions of this Section 3.05, each Certificate representing Shares (other than Certificates representing Shares owned beneficially or of record by the Parent or the Subsidiary, Shares held in the treasury of the Company and Dissenting Shares in respect of which appraisal rights are perfected) shall represent for all purposes the right to receive $17.50 in cash multiplied by the number of Shares evidenced by such Certificate, without any interest thereon, and each Certificate representing referred Shares (other than Certificates representing Dissenting Shares in respect of which appraisal rights are perfected) shall represent for all purposes the right to receive the Liquidation Value thereof in cash multiplied by the number of Preferred Shares evidenced by such Certificate, without any interest thereon.

(c) After the Effective Time there shall be no transfers on the stock transfer books of the Surviving Corporation of the Shares or the Preferred Shares which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be canceled and exchanged for cash as provided in this Article III.

(d) Any portion of the Exchange Fund which remains unclaimed by the stockholders of the Company for six months after the Effective Time shall be repaid to the Surviving Corporation, upon demand. Any stockholders of the Company who have not theretofore complied with Section 3.05(b) shall thereafter look only to the Surviving Corporation for payment of their claim for $17.50 per Share or the Liquidation Value per Preferred Share, as the case may be, without any interest thereon, but shall have no greater rights against the Surviving Corporation than may be accorded to general creditors of the Surviving Corporation under Delaware law.

3.06. Adjustments. If, between the date of this Agreement and the Effective Time, the Shares or the Preferred Shares shall have been changed into a different number of shares or a different class by reason of any reclassification, recapitalization, split-up, combination, exchange of shares or readjustment, or a stock dividend thereon shall be declared with a record date within such period, the amount into which the Shares or the Preferred Shares, as the case may be, will be converted in the Merger shall be correspondingly adjusted.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Parent and the Subsidiary as follows:

4.01. Organization. The Company and each of its subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and each has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as described in its Annual Report on Form 10-K for the year ended December 31, 1986 (the "Form 10-K") and as now being conducted on the date of this Agreement. The Company and each of its subsidiaries is duly qualified or licensed and in good standing to do business in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing will not have a material adverse effect on the business, operations or financial condition of the Company and its subsidiaries taken as a whole. Each of the Company's subsidiaries is listed in the Form 10-K if required to be listed therein. The Company owns all of the issued and outstanding capital stock of each of its subsidiaries. Apart from the stock of these subsidiaries, the Company does not own capital stock of or equity interests in any corporation, venture, or partnership. The Company has heretofore delivered to the Parent accurate and complete copies of the Certificate of Incorporation and By-Laws, as currently in effect of the Company.

4.02. Capitalization. The authorized capital stock of the Company consists of: (a) 22,000,000 shares of Common Stock and 3,000,000 shares of Nonvoting Stock, of which, on May 20, 1987, there were 5,333,207 shares of Common Stock and 1,268,391 shares of Nonvoting Stock issued and outstanding, 769,222 shares of Common Stock reserved for issuance under stock option plans, 741,666 shares of Common Stock reserved for issuance upon exercise of Warrants, and 2,750 shares of Common Stock held in the Company's

treasury, (b) 5,000,000 shares of preferred stock, par value $0.01 per share, of which no shares are issued or outstanding, (c) 80,000 shares of Senior Preferred Stock, of which there are 80,000 shares issued and outstanding, and (d) 256,000 shares of Series A Preferred Stock, of which there are 256,000 shares issued and outstanding. All issued and outstanding Shares and Preferred Shares are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights. Except for (i) options to acquire not more than 555,672 shares of Common Stock pursuant to the Company's stock option plans, (ii) warrants to acquire not more than 666,666 shares of Common Stock at $12.875 per share pursuant to the Warrants and 75,000 shares of Common Stock at $9.04 per share pursuant to the Stock Subscription Warrant, dated July 3, 1986, and (iii) the Rights, there are not now, and at the Effective Time there will not be, any existing options, warrants, calls, subscriptions, or other rights or other agreements or commitments whatsoever obligating the Company or any of its subsidiaries to issue, transfer, deliver or sell or cause to be issued, transferred, delivered or sold any additional shares of capital stock of the Company or any of its subsidiaries, or obligating the Company or any of its subsidiaries to grant, extend or enter into any such agreement or commitment. The Rights are not now, and will not become, exercisable in any way or distributable separately from the Shares.

4.03. Authority Relative to this Agreement. The Company has all requisite corporate power and authority (a) to execute and enter into this Agreement and, subject to approval by the stockholders of the Company, to consummate the transactions contemplated hereby and (b) to prepare, file and distribute any necessary proxy statement (hereinafter sometimes called the "Proxy Statement") which is to be mailed to the stockholders of the Company in connection with any meeting of stockholders convened in accordance with Section

6.03. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Company's Board of Directors and no other corporate proceedings on the part of the Company or any subsidiary of the Company are necessary to authorize this Agreement or the Proxy Statement, and, except for the adoption of this Agreement by its stockholders, no other corporate proceedings on the part of the Company are necessary to consummate the transactions so contemplated. This Agreement has been duly and validly executed and delivered by the Company, and subject only (with respect to Articles II and III) to approval by holders of a majority of the outstanding shares of Common Stock and by holders of two-thirds of the outstanding shares of Nonvoting Stock, this Agreement constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms except to the extent that its enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally or by general equitable principles.

4.04. Consents and Approvals; No Violation. Except for applicable requirements of the Exchange Act, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), the Investment Canada Act of 1985, any applicable requirements under state takeover statutes (the Company knows of none which would be applicable), and filing and recordation of appropriate merger documents as required by the GCL, to the best knowledge of the Company, no filing with, and no permit, authorization, consent or approval of, any public body is necessary for the consummation by the Company of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement nor the consummation of the

transactions contemplated hereby nor compliance by the Company with any of the provisions hereof will (i) conflict with or result in any violation of any provision of the Certificate of incorporation or By-Laws of the Company or any of its subsidiaries, (ii) cause the Rights to become exercisable or to be separately tradable from the Shares, (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Company or any of its subsidiaries is a party or by which any of them or any of their properties or assets may he bound or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of its subsidiaries or any of their properties or assets, excluding from the foregoing clauses (iii) and (iv) violations, breaches or defaults which, either individually or in the aggregate, would not have a material adverse effect on the business, operations or financial condition of the Company and its subsidiaries taken as a whole.

4.05. Financial Statements and Reports. Since June 27, 1986, the date on which the Shares first became registered under the Securities Act of 1933, as amended (the "Securities Act"), the Company has filed all required forms, reports and documents with the Securities and Exchange Commission (the "SEC") required to be filed by it pursuant to the Securities Act and the Exchange Act, all of which have complied in all material respects with all applicable requirements of the Securities Act and the Exchange Act. The Company has previously furnished to the Parent copies of all such forms, reports and documents (hereinafter collectively referred to as the "Company Reports"). None of such forms, reports or

documents, including without limitation any financial statements or schedules included therein, at the time filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

The consolidated balance sheets and the related consolidated statements of earnings, stockholders' equity and changes in financial position (including the related notes thereto) of the Company and the subsidiaries included in the financial statements contained in the Company's Form 10-K and in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 1987 (the "Company 10-Q") (such consolidated balance sheet and related statements in the Company 10-Q collectively known as the "Company Balance Sheet"), present fairly the consolidated financial position of the Company and the subsidiaries as of their respective dates, and the results of consolidated operations and changes in consolidated financial position for the periods presented therein, all in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted therein, and subject in the case of quarterly financial statements to normal year-end audit adjustments.

4.06. Absence of Undisclosed Liabilities. The Company and its subsidiaries do not have liabilities or obligations (whether absolute, accrued, contingent or otherwise) of a material nature required by generally accepted accounting principles to be reflected in a corporate balance sheet, except liabilities, obligations or contingencies which are accrued or reserved against in the Company Balance Sheet or reflected in the notes thereto or, except as previously disclosed in writing by the Company to the Parent and the Subsidiary, which were incurred after the date of the Company Balance

Sheet in the ordinary course of business and consistent with past practices.

4.07. Absence of Material Adverse Change. Since March 31, 1987, except as reflected in the Company Reports, or as previously disclosed in writing by the Company to the Parent and the Subsidiary, neither the Company nor any subsidiary of the Company has

(a) incurred any obligations or liabilities which are material to the Company and its subsidiaries taken as a whole, whether absolute, accrued, contingent or otherwise (including, without limitation, liabilities as guarantor or otherwise with respect to obligations of others), other than in the ordinary course of business,

(b) mortgaged, pledged or subjected to any lien, lessee, security interest or other charge or encumbrance any of its assets, tangible or intangible, other than in the ordinary course of business,

(c) acquired or disposed of any assets or properties, or entered into any agreement or other arrangement for any such acquisition or disposition, other than in the ordinary course of business,

(d) forgiven or canceled any debts or claims or waived any rights of value, other than in the ordinary course of business,

(e) declared, made, paid or set apart any sum for any dividend (other than regular quarterly dividends on the Preferred Shares) or other distribution to its stockholders or purchased or redeemed any shares of its capital stock or any option, warrant or right to purchase any such capital stock, or reclassified its capital stock,

(f) authorized the creation or issuance of or sold any shares of its capital stock of any class or any options, warrants or rights to purchase any such shares or any securities convertible into or exchangeable for such shares except for the issuance of shares upon the exercise of options outstanding under the Company's stock option plans and upon the exercise of Warrants,

(g) increased by more than 5% the wages, salaries, compensation, pension or other benefits payable to any employee who as of the date hereof receives from the Company or any subsidiary of the Company in excess of $50,000 in the aggregate on an annual basis, or granted any severance or termination pay, or entered into any employment agreement with any officer or salaried employee which is not terminable by the employer, without cause and without penalty, upon notice of 30 days or less, or entered into or amended any severance or termination agreement or any employee benefit plan,

(h) entered into any transaction material to the Company and its subsidiaries taken as a whole other than in the ordinary course of business (other than transactions entered into in connection with the transactions contemplated hereby),

(i) suffered any damage, destruction or loss (whether or not covered by insurance) materially adversely affecting, in the aggregate, the financial condition, operations or business of the Company and its subsidiaries taken as a whole,

(j) suffered any strike or other material labor trouble adversely affecting the financial condition, operations or business of the Company and its subsidiaries taken as a whole,

(k) suffered any loss of employees or customers that materially and adversely affects the financial condition, operations or business of the Company and its subsidiaries taken as a whole,

(l) changed any of the accounting methods used by the Company or any of its subsidiaries, or

(m) amended its Certificate of Incorporation or By-Laws.

4.08. Offer Documents; Proxy Statement; Other Information. None of the information supplied by the Company for inclusion in the Proxy Statement and none of the information included in a Statement on Schedule 14D-9 will, at the respective times such documents or any amendments or supplements thereto are filed with the SEC, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation is made by the Company with respect to information supplied by Parent or any affiliate of Parent for inclusion in the Proxy Statement.

None of the information relating to the Company and its subsidiaries included in any proxy statement will, at the time the Proxy Statement is mailed, be false or misleading with respect to any material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading or, at the time of the meeting of stockholders to which the Proxy Statement relates or at the Effective Time, as then amended or supplemented, necessary to correct any statement which has become false or misleading in any earlier communication with respect to the solicitation of any proxy for such meeting. The Statement on Schedule 14D-9 and any Proxy Statement each will comply in all material respects, both as to form and otherwise, with the requirements of the Exchange Act and the rules and regulations thereunder.

4.09. Disclosure. No representations or warranties by the Company in this Agreement and, except to the extent of any subsequent correction or supplement with respect thereto, no statement contained in any document, certificate or other writing furnished by the Company to the Parent or the Subsidiary as contemplated by this Agreement, when considered as a whole, contains any untrue statement of a material fact or omits any material fact necessary to make the statements herein or therein not misleading.

4.10. Finders and Investment Bankers. Except for the engagement of William Blair & Company by the Company pursuant to an engagement letter dated April 14, 1987, a copy of which has previously been delivered to the Parent, all negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the intervention of any person acting on behalf of the Company in such manner as to give rise to any valid claim against the

Parent, the Subsidiary or the Company for any broker's or finder's fee or similar compensation.

4.11. Severance and Termination Agreements. Except for agreements heretofore delivered to the Parent (a complete list of which has been furnished to Parent), neither the Company nor any of the Company's subsidiaries is a party to any agreements providing for severance or termination payments to officers of the Company or any subsidiary of the Company, and will not be a party to any such agreements at the Effective Time.

4.12. Title to Assets, etc. All material real property owned or leased by the Company or any subsidiary of the Company (the "Real Property") is listed in the Form 10-K. The Company or such subsidiary of the Company, as the case may be, has good and marketable title to all such Real Property listed in the Form 10-K as owned by it and to all other material assets, including contractual rights, reflected in the Form 10-K as being owned by it, including, without limitation, all those reflected on the Company Balance Sheet, or acquired after such date (except that subsequent to the date of the Company Balance Sheet, J.P. Industries, Inc. has asserted that approximately $9 million of the receivable on the Company Balance Sheet arising out of the sale of the Company's Engine Parts Division to J.P. Industries, Inc. is not owed to the Company) and the Company or such subsidiary of the Company, as the case may be, has valid leasehold interests in all such Real Property listed in the Form 10-K as leased by it and all other material assets and properties reflected in the Form 10-K as being leased by it, in each case free and clear of all mortgages, liens, charges, encumbrances, easements, security interests or title imperfections, except in each such case (a) as noted in the Form 10-K, (b) for liens, charges,

encumbrances, easements and title imperfections that are not, in the aggregate, material to the financial condition, operations or business of the Company and its subsidiaries, taken as a whole and (c) assets sold in the ordinary course of business since the date of the Company Balance Sheet and assets sold to J.P. Industries, Inc. in connection with the sale of the Company's Engine Parts Division. The assets that the Company and its subsidiaries own, use or hold in connection with the business of the Company and its subsidiaries include all properties and assets the use of which is reasonably necessary for the continued conduct of the business of the Company and its subsidiaries as now being conducted.

4.13. Litigation. There is no action, proceeding or, to the best of the Company's knowledge, any investigation or inquiry pending which would, if adversely determined, result in any material adverse change in the financial condition, operations or business of the Company and its subsidiaries taken as a whole, nor, to the best of the Company's knowledge has any such action, proceeding, investigation or inquiry been threatened. There are no citations, fines or penalties heretofore asserted against the Company or any subsidiary of the Company under any federal, state, local or foreign law which remain unpaid, nor has the Company or any subsidiary of the Company received any notice or any other material communication from the United States Environmental Protection Agency (the "EPA"), the Occupational Safety and Health Administration ("OSHA") or any other federal, state, local or foreign agency or other governmental authority, in each case with respect to any material violations or alleged violations of any federal, state, local or foreign law or regulation.

4.14. Trademarks, Trade Names, Patents, etc. The Company or a subsidiary of the Company, as the case may be, has the right to use all patents, trademarks, trade names, copyrights, inventions, formulae, trade secrets, manufacturing processes, know-how and other industrial property rights necessary to manufacture and market the products presently manufactured or marketed by it, including any product licensed from others. Neither the Company nor any subsidiary of the Company has any knowledge of any notice or claim that any such patent, trademark, trade name, copyright is not valid or enforceable by the Company or such subsidiary of the Company, as the case may be, or of any infringement upon or conflict with any such patent, trademark, trade name, copyright or other similar property right of any third party by the Company or such subsidiary of the Company, as the case may be, or any claim of a third party alleging such infringement or conflict.

4.15. Compliance with Other Instruments and Laws. Neither the Company nor any subsidiary of the Company is in violation of any term of its Certificate of Incorporation or By-Laws, or in violation of any mortgage, indenture, instrument or agreement relating to indebtedness for borrowed money or of any judgment, decree or order which names the Company or any subsidiary of the Company or in violation of any term of any other instrument, contract or agreement to which it is a party or by which it or any of its properties or assets is bound, which violation would have a material adverse effect on the financial condition, operations or business of the Company and the Company's subsidiaries, taken as a whole. The Company and each subsidiary of the Company are in compliance in all material respects with all good manufacturing practice standards established by the EPA, OSHA or any other federal, state, or local agency or other governmental authority, and the Company's and each of its

subsidiary's businesses are in compliance in all material respects with all statutes, laws, ordinances, rules, governmental regulations, permits, concessions, grants, franchises, licenses or other governmental authorizations or approvals applicable to the operation of such business, except where such violation will not materially adversely affect the financial condition, operations or business of the Company and the Company's subsidiaries, taken as a whole. All permits, concessions, grants, franchises, licenses and other governmental authorizations and approvals material to the conduct of any business material to the Company and its subsidiaries taken as a whole have been duly obtained and are in full force and effect. There are no proceedings pending or, to the best of the Company's knowledge, threatened which may result in the revocation, cancellation, suspension or materially adverse modification thereof, nor will the consummation of the transactions contemplated by this Agreement have such result.

4.16. Contracts. Neither the Company nor any of the Company's subsidiaries is in material default, and no event has occurred which (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a material default, under any contract or lease which is material to the Company and the Company's subsidiaries taken as a whole. To the best knowledge of the Company, no other party to any such contract or lease is in material default, and no event has occurred which (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a material default, under any such contract or lease.

4.17. Tax Returns and Payments. All federal, state, county, municipal or foreign tax returns required by law to be

filed have been duly filed, and all taxes, assessments, fees and other governmental charges upon the Company, any subsidiary of the Company or upon any of their respective properties, assets, revenues, income or franchises which have become due and payable as shown therein have been paid, and adequate provision has been made for all such taxes, assessments, fees and other charges which may become due and payable with respect to such periods for which returns were required to be filed. Neither the Internal Revenue Service nor any other taxing authority or agency is now asserting or, to the best of the Company's knowledge, threatening to assert against the Company or any subsidiary of the Company any deficiency or claim for material additional taxes or interest thereon or penalties in connection therewith. Neither the Company nor any subsidiary of the Company has granted any waiver of any statute of limitations with respect to, or any extension of a period for the assessment of, any federal, state or foreign income tax or material county or municipal income tax. The accruals and reserves for taxes reflected in the Company Balance Sheet are adequate to cover all taxes accruable through such date (including interest and penalties, if any, thereon) in accordance with generally accepted accounting principles.

4.18. ERISA. All employee benefit plan subject to any of the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), maintained or contributed to by the Company, except for group health, life, accident and disability insurance plans (collectively, the "Plans") for employees of the Company, have been administered in material compliance with ERISA and there have been no breaches of fiduciary duties with respect to any such Plan.

4.19. Section 341(f) Election. Neither the Company nor any of its subsidiaries has made an election under Section 341(f) of the Internal Revenue Code of 1986.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE PARENT AND THE SUBSIDIARY

The Parent and the Subsidiary each jointly and severally represent and warrant to the Company as follows:

5.01. Organization. Each of the Parent and the Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

5.02. Authority Relative to this Agreement. Each of the Parent and the Subsidiary has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized and approved by the Boards of Directors of the Parent and the Subsidiary and by the Parent as the sole stockholder of the Subsidiary, and no other corporate proceedings on the part of the Parent or the Subsidiary are necessary to authorize this Agreement or the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by each of the Parent and the Subsidiary and constitutes a valid and binding agreement of the Parent and the Subsidiary, enforceable against the Parent and the Subsidiary in accordance with its terms, except to the extent that its enforceability may be limited by applicable

bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights generally or by general equitable principles.

5.03. Consents and Approvals; No Violation. Except for any applicable requirements of the Exchange Act, the HSR Act, the investment Canada Act of 1985, any applicable requirements under state takeover statutes, and filing and recordation of appropriate merger documents as required by the GCL, and except as may be required because the Company is a party to this Agreement, to the best knowledge of the Parent and the Subsidiary, no filing with, and no permit, authorization, consent or approval of, any public body or authority, the absence of which would, either individually or in the aggregate, have a material adverse effect on the business, operations or financial condition of the Parent and the Subsidiary, is necessary for the consummation by the Parent and the Subsidiary of the transactions contemplated by this Agreement. Assuming that all filings, permits, authorizations, consents and approvals have been duly made or obtained as contemplated by the immediately preceding sentence and as otherwise heretofore disclosed in writing by the Parent to the Company, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not (i) violate any provision of the Certificate of Incorporation or By-Laws of the Parent or the Subsidiary, (ii) will not violate any statute, rule, regulation, order or decree of any public body or authority by which the Parent or the Subsidiary or any of their respective properties is bound, or (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default under, any license, franchise, permit, indenture, agreement or other instrument to which either of the Parent or the Subsidiary is a party, or by which any of them or any of their respective properties is bound.

5.04. Offer Documents; Proxy Statement; Other Information. None of the information supplied by the Parent or the Subsidiary for inclusion in the Offer Documents (including any amendments or supplements thereto and including a Tender Offer Statement on Schedule 14D-1), contains or will contain at the times any amendments or supplements thereto are filed with the Securities and Exchange Commission (the "SEC"), any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Offer Documents will comply in all material respects, both as to form and otherwise, with the requirements of the Exchange Act and the rules and regulations thereunder. None of the information supplied or to be supplied by the Parent or the Subsidiary for inclusion in any proxy statement which is to be mailed to the stockholders of the Company in connection with any meeting of stockholders convened in accordance with Section 6.03 will, at the time such proxy statement is mailed, be false or misleading with respect to any material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading or, at the time of the meeting of stockholders to which such proxy statement relates or at the Effective Time, as then amended or supplemented, necessary to correct any statement which has become false or misleading in any earlier communication with respect to the solicitation of any proxy for such meeting. If at anytime prior to the Effective Time any event relating to the Parent or the Subsidiary should be discovered which should beset forth in an amendment of, or a supplement to, such proxy statement, the Parent shall promptly so inform the Company and will furnish all necessary information to the Company relating to such event.

5.05. Financing. No later than the expiration of the Offer, the Parent and the Subsidiary shall have obtained sufficient funds and credit arrangements to provide all financing required to consummate the Offer.

ARTICLE VI
COVENANTS

6.01. Conduct of Business of the Company. Except as contemplated by this Agreement, during the period from the date of this Agreement to the Effective Time, the Company and its subsidiaries will each conduct its operations according to its ordinary and usual course of business, and the Company and its subsidiaries will each use its best efforts to preserve intact its business organization, to keep available the services of its officers and employees and to maintain satisfactory relationships with licensors, licensees, suppliers, contractors, distributors, customers and others having business relationships with it. The Company will promptly advise each of the Parent and the Subsidiary in writing of any change in the Company's or any of its subsidiary's financial condition, operations or business which is or may be materially adverse to it and its subsidiaries taken as a whole. Without limiting the generality of the foregoing, and except as otherwise expressly provided in this Agreement, prior to the Effective Time, neither the Company nor any of its subsidiaries will, without the prior written consent of the Parent:

(a) amend its Certificate of Incorporation or By-Laws except to permit the election of directors as provided in Section 1.02 hereof;

(b) subject to the fiduciary duty of the Board of Directors as advised by counsel, amend, modify, rescind or

otherwise change or affect any of the resolutions of the Board of Directors of the Company declaring advisable the Offer or the Merger;

(c) take any such action, by resolution of the Board of Directors or otherwise, to trigger the exercisability of the Rights, to cause the Rights to become exercisable in any way or to become distributable separately from the Common Stock;

(d) authorize for issuance, issue, sell, deliver or agree or commit to issue, sell or deliver (whether through the issuance or granting of additional options, warrants, commitments, subscriptions, rights to purchase or otherwise) any stock of any class or any securities convertible into shares of stock of any class, except as required by any Warrant, the warrant to purchase 75,000 Shares at an exercise price of $9.04 per share held by Reading Company or any employee stock option agreement;

(e) split, combine or reclassify any shares of its capital stock, declare, set aside or pay any dividend except for regular quarterly dividends on its Preferred Shares or other distribution (whether in cash, stock or property or any combination thereof) in respect of its capital stock, or redeem or otherwise acquire any shares of capital stock of the Company or any of its subsidiaries;

(f) (i) create, incur or assume any long-term debt (including obligations in respect of capital leases) or, except in the ordinary course of business under existing lines of credit, create, incur, assume, maintain or permit to exist any

short-term debt in an aggregate amount for the Company and its subsidiaries as a whole exceeding $1,000,000 (ii) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other person, except wholly owned subsidiaries of the Company in the ordinary course of business and consistent with past practices; or (iii) make any loans, advances or capital contributions to, or investments in, any other person (other than customary loans or advances to employees);

(g) except as otherwise contemplated by or described or referred to in the Company Reports or as disclosed in writing to the Parent and the Subsidiary prior to the date of this Agreement: (i) increase in any manner the compensation, bonus, profit-sharing, stock option, pension, retirement, deferred compensation, employment or other plan, agreement, trust, fund or arrangement for the benefit of any of its directors, officers or other employees, except in the ordinary course of business and in accordance with its customary past practices; (ii) pay or agree to pay any pension, retirement allowance or other employee benefit not required by any existing plan, agreement or arrangement to any such director, officer or employee, whether past or present; or (iii) except in accordance with its customary past practices, commit itself (other than pursuant to any new or renewed collective bargaining agreement) to any additional pension, profit-sharing, bonus, incentive, deferred compensation, stock purchase, stock option, stock appreciation right, group insurance, severance pay, retirement or other employee benefit plan, agreement or arrangement, or to any employment or consulting agreement with or for the benefit of any person, to amend any of such plans or any of such agreements in existence on the date hereof;

(h) except in the ordinary course of business, sell, transfer, mortgage, or otherwise dispose of, or encumber, or agree to sell, transfer, mortgage or otherwise dispose of or encumber, any properties, real, personal or mixed;

(i) enter into any other agreements, commitments or contracts which, individually or in the aggregate, are material to the Company and its subsidiaries taken as a whole, except agreements, commitments or contracts for the purchase, sale or lease of goods or services in the ordinary course of business, consistent with past practice and not in excess of current requirements, or otherwise make any material change in the conduct of the business or operations of the Company and its subsidiaries taken as a whole; or

(j) agree to do any of the foregoing.

6.02. Access toInformation. (a) Between the date of this Agreement and the Effective Time, the Company will give each of the Parent and the Subsidiary and their authorized representatives reasonable access to all plants, offices, warehouses and other facilities and to all books and records of it and its subsidiaries, will permit the Parent and the Subsidiary to make such reasonable inspections as they may require and will cause its officers and those of its subsidiaries to furnish the Parent and the Subsidiary with a copy of each report, schedule and other document filed or received by it during such period pursuant to the requirements of federal and state securities laws and such financial and operating data and other information with respect to the business and properties of the Company and its subsidiaries as the Parent and the Subsidiary may from time to time request.

(b) The Parent and the Subsidiary will each hold and will each cause its consultants and advisors to hold in confidence, unless compelled to disclose by judicial or administrative process, or, in the opinion of its outside counsel, by other requirements of law, all documents and information concerning the Company and its subsidiaries furnished to the Parent and the Subsidiary in connection with the transactions contemplated by this Agreement (except to the extent that such information can be shown to have been (i) known by the Parent and the Subsidiary, before its disclosure by the Company to the Parent and the Subsidiary, (ii) in the public domain through no fault of the Parent and the Subsidiary or (iii) later lawfully acquired by the Parent and the Subsidiary from other sources) and will not release or disclose such information to any other person, except its auditors, attorneys, financial advisors and other consultants and advisors and lending institutions (including banks) in connection with this Agreement (it being understood that such persons shall be informed by the Parent and the Subsidiary of the confidential nature of such information and shall be directed by the Parent and the Subsidiary to treat such information confidentially). If the transactions contemplated by this Agreement are not consummated, such confidence shall be maintained except to the extent such information comes into the public domain through no fault of the Parent and the Subsidiary and, if requested by the Company, the Parent and the Subsidiary will return to the Company all copies of written information furnished by the Company to the Parent or the Subsidiary or their agents, representatives or advisors. It is understood that the Parent and the Subsidiary shall be deemed to have satisfied their obligations to hold such information confidential if each exercises the same care as it takes to preserve confidentiality for its own similar information.

6.03. Stockholder Approval. As soon as practicable following expiration of the Offer the Company will take all additional steps necessary duly to call, give notice of, convene and hold a meeting of its stockholders as soon as practicable for the purpose of adopting and approving this Agreement, the transactions contemplated hereby and for such other purposes as may be necessary or desirable. The Board of Directors of the Company has determined, by vote of all the directors present at the meeting, that the Merger is advisable and in the best interests of stockholders of the Company and, subject to its fiduciary duty as advised by counsel, will (i) recommend to the Company's stockholders the adoption and approval of this Agreement and the transactions contemplated hereby and the other matters to be submitted to the Company's stockholders in connection therewith and (ii) use its best efforts to obtain the necessary approvals by the Company's stockholders of this Agreement and the transactions contemplated hereby. Should the Parent and the Subsidiary acquire at least 90% of the outstanding shares of each class of Shares and Preferred Shares, the parties agree, if so requested by the Parent, to take all necessary and appropriate action to cause the Merger to become effective, as soon as practicable following expiration of the Offer, without a meeting of the stockholders of the Company, in accordance with Section 253 of the GCL.

6.04. Options. The Company will use its best efforts to cause each outstanding option granted by the Company which is outstanding immediately prior to the Effective Time to be canceled prior to the Effective Time in exchange for a payment from the Company in cash, equal to the excess of $17.50 over the per share exercise price of the option multiplied by the number of shares subject to the option, subject to any required withholding of taxes, provided that with respect to holders of such options who are directors, officers or employees of the Company on the date hereof, such

payments shall be made to such holders on January 3, 1988, together with interest thereon from the Effective Time through such date at a rate per annum equal to the 3 month treasury bill rate from time to time in effect.

6.05. Indemnification and Insurance. (a) The Parent agrees that for not less than six years after the Closing Date it shall cause the Certificate of Incorporation and By-Laws of the Surviving Corporation not to have or omit any provision that would curtail the existing rights of the Company's directors and officers to indemnification from the Company.

(b) The Parent will use its best efforts to maintain in effect, for a period of not less than three years after the Effective Time, either the Company's current insurance policies for directors' and officers' liabilities, or policies which provide coverage which in the aggregate is not materially less for the directors and officers of the Company than the coverage under such policies, with respect to acts or omissions of directors or officers of the Company, provided that such insurance is available at reasonable rates. Rates shall be deemed to be reasonable if they are no more than the rates now paid by the Company, or, if more than such rates, are no more than the rates that the Parent has agreed to pay (on a comparable basis) for insurance coverage for its directors and officers.

6.06. Expenses. In the event that either (a) the Company is acquired (which, for the purposes of this Section 6.06 shall include the acquisition of in excess of 45% of the outstanding Shares by any person, group or entity) by any person, group or entity (other than the Parent and the Subsidiary or their affiliates) prior to one year from the date

hereof or (b) the Board of Directors amends, modifies or withdraws the approval and recommendation of the Offer and this Agreement, then, within two business days thereafter the Company will pay, in lieu of the payment of expenses incurred by the Parent and the Subsidiary or any of their affiliates in connection with this Agreement and the transactions contemplated hereby and as compensation for other losses and damages incurred by the Parent and the Subsidiary including the foregoing of other opportunities, to the Subsidiary $7,000,000 in cash by certified or bank cashier's check; provided, however, that not more than one such payment shall be made under this Section 6.06 and provided further that such payment shall not be made if the Offer is withdrawn in breach of its terms or if either of the Parent and the Subsidiary is in material breach of its obligations hereunder.

6.07. Employee Benefits. (a) The Parent and the Surviving Corporation agree that no modification, amendment or termination of any bonus, profit-sharing, severance, termination, stock option, pension, retirement, deferred or contingent compensation or other employee benefit agreements, trusts, plans, policies or other arrangements for the benefit of any director, officer or employee of the Company or any of its subsidiaries shall reduce the benefits earned or accrued as of the Effective Time by any person.

(b) From and after the Effective Time, the Parent and the Surviving Corporation agree that all existing employment, indemnification, severance, consulting or other compensation agreements between the Company or any of its subsidiaries and any officer, director or employee of the Company or any of its subsidiaries, which have been disclosed in writing to the Parent and the Subsidiary will be honored in accordance with their terms as of the date hereof. Prior to such time, Parent

agrees not to take any action inconsistent with the preceding sentence.

(c) Except as otherwise provided by law, Parent agrees that, for a period of not less than one year following, the Effective Time, the Surviving Corporations shall provide employee benefit plans, practices and policies which are, in the aggregate, no less favorable than those currently provided by the Company to its employees and, thereafter, the Surviving Corporation shall provide employees benefit plans, practices or policies which are in the aggregate no less favorable than those provided to employees of other subsidiaries or divisions of Parent with comparable positions. The Parent agrees to cause the Surviving Corporation to maintain the Company's Key Management Incentive Plan in effect until December 31,1987.

(d) If any employee of the Company or any of its subsidiaries becomes a participant in any employee benefit plan, practice or policy of Parent or the Surviving Corporation, such employee shall be given credit under such plan for all service prior to the Effective Time with the Company and its subsidiaries for purposes of eligibility and vesting for all purposes for which such eligibility or vesting service is recognized, but not for purposes of benefit accrual.

6.08. Best Efforts. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use its best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. The Parent shall cause the Subsidiary to

fulfill its obligations under this Agreement, subject to the terms and conditions of this Agreement. In case at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each corporation which is a party to this Agreement shall take all such necessary action.

6.09. Consents. The Parent, the Subsidiary and the Company each will use their best efforts to obtain consents of all third parties and governmental authorities necessary to the consummation of the transactions contemplated by this Agreement.

6.10. Public Announcements. The Parent, the Subsidiary and the Company will consult with each other before issuing any press release or otherwise making any public statements with respect to the Merger and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by law or by obligations pursuant to any listing agreement with any securities exchange.

6.11. Consent of the Parent. The Parent, which is the sole stockholder of the Subsidiary, by executing this Agreement consents to the execution, delivery and performance of this Agreement by the Subsidiary, and such consent shall, be treated for all purposes as a vote duly adopted at a meeting of the stockholders of the Subsidiary held for such purpose.

6.12. Vote for the Merger. At the meeting of the Company's stockholders contemplated by Section 6.03, the

Parent and the Subsidiary will vote all shares of Common Stock held by them on the record date for such meeting in favor of this Agreement.

6.13. No Solicitation. Neither the Company nor any of its subsidiaries, officers, directors, employees, agents or representatives (including, without limitation, investment bankers, attorneys and accountants) or any of the officers, directors, employees, agents or representatives of any of the subsidiaries of the Company shall, directly or indirectly, (a) initiate contact with, solicit or encourage any inquiries or proposals by, or (b) except as required by applicable law as advised by the Company's counsel, enter into any discussions or negotiations or agreements with, or disclose directly or indirectly any information not customarily disclosed concerning its business and properties to, or afford any access to its properties, books and records to, any corporation, partnership, person or other entity or group in connection with any possible proposal (an "Acquisition Proposal") regarding a sale of the Company's capital stock or a merger, consolidation, or sale of all or a substantial portion of the assets of the Company or any subsidiary of the Company which is material to the Company and the Company's subsidiaries taken as a whole, or any similar transaction; provided that the Company's Board of Directors shall be free to take any position with respect to a third party offer pursuant to Rules 14d-9 and 14e-2 under the Exchange Act which, upon the advice of the Company's counsel is required by the Board's fiduciary duty. The Company will notify the Parent and the Subsidiary immediately if any discussions or negotiations are sought to be initiated, any inquiry or proposal is made, or any such information is requested, with respect to an Acquisition Proposal or potential Acquisition Proposal or if any Acquisition Proposal is received or indicated to be forthcoming.

ARTICLE VII
CLOSING CONDITIONS

The respective obligations of each party to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions:

(a) Neither the Parent and the Subsidiary nor the Company shall be subject to any order, decree or injunction of a court of competent jurisdiction or any other governmental agency of competent jurisdiction which (i) prevents or delays the consummation of the Merger or the transfer thereunder of the assets of the Company to either of the Parent or the Subsidiary or (ii) would impose any material limitation on the ability of the Parent effectively to exercise full rights of ownership of the Surviving Corporation Common Stock or the assets or the business of the Surviving Corporation;

(b) If required, approval of the Merger by stockholders of the Company shall have been obtained;

(c) Any waiting period (including any extension thereof) applicable to the Merger under the HSR Act shall have expired or been terminated; and

(d) The holders of the Senior Notes of the Company, issued pursuant to two Senior Note Purchase Agreements, each dated as of June 15, 1986, shall have consented to the Merger.

ARTICLE VIII
CLOSING

8.01. Time and Place. The closing of the Merger (the "Closing") shall take place at the offices of Debevoise & Plimpton, 875 Third Avenue, New York, New York 10022, as soon as practicable following satisfaction of the closing conditions set forth in Article VI. The date on which the Closing actually occurs is herein referred to as the "Closing Date."

8.02. Filings at the Closing. At the Closing the Parent, the Subsidiary and the Company shall cause a certificate of merger to be filed and recorded in accordance with the provisions of Section 103 of the GCL and shall take any and all other lawful actions and do any and all other lawful things necessary to cause the Merger to become effective.

ARTICLE IX
TERMINATION AND ABANDONMENT

9.01. Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after approval by the stockholders of the Company:

(a) by mutual consent of the Board of Directors of the Subsidiary and the Board of Directors of the Company;

(b) by either the Subsidiary or the Company if, without fault of such terminating party, the Merger shall not have been

consummated on or before December 31, 1987, provided, however, that the right to terminate this Agreement shall not be available (i) to any party whose failure to fulfill any obligation of this Agreement has been the cause of, or resulted in, the failure of the Merger to have occurred on or before the aforesaid date, or (ii) to the Company, if the Parent and the Subsidiary shall have purchased pursuant to the Offer a number of Shares, which when combined with Shares already held by the Parent and the Subsidiary, equals at least a majority of the outstanding Shares;

(c) by either the Parent and the Subsidiary or the Company, if the Offer shall terminate in accordance with its terms without any Shares having been purchased thereunder;
(d) by either the Parent and the Subsidiary or the Company, if any court of competent jurisdiction in the United States or other United States governmental body shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the Offer or Merger, and such order, decree, ruling or other action shall have become final and nonappealable; or

(d) by either the Parent and the Subsidiary or the Company, if any court of competent jurisdiction in the United States or other United States governmental body shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the Offer or Merger, and such order, decree, ruling or other action shall have become final and non-appealable; or

(e) by either the Parent or the Subsidiary, if prior to the purchase of Shares pursuant to the Offer the Company shall have materially breached or failed in any material respect to comply with any of its obligations under this Agreement, or

any representation or warranty contained in this Agreement shall have been inaccurate when made in any material respect.

Any action by the Company to terminate this Agreement pursuant to this Section 9.01, or to amend or waive compliance with this Agreement pursuant to Sections 10.01 and 10.02, shall be taken only if approved by a majority of the persons who are directors of the Company on the date hereof, or successors to such persons nominated with the approval of such persons.

9.02. Procedure and Effect of Termination. In the event of termination and abandonment of the Merger by either of the Parent or the Subsidiary, or by the Company, pursuant to Section 9.01, written notice thereof shall forthwith be given to the others and this Agreement shall terminate and the Merger shall be abandoned, without further action by any of the parties hereto. The Subsidiary agrees that any termination by the Parent shall be conclusively binding upon it, whether given expressly on its behalf or not, and the Company shall have no further obligation with respect to it. If this Agreement is terminated as provided herein no party hereto shall have any liability or further obligation to any other party to this Agreement except that any termination shall be without prejudice to the rights of any party hereto arising out of willful breach by any other party of any covenant or agreement contained in this Agreement, and except that the provisions of Sections 6.02(b) and 6.06 shall survive.

ARTICLE X
MISCELLANEOUS

10.01. Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified or

supplemented only by written agreement of the Parent, the Subsidiary and the Company at any time prior to the Effective Time with respect to any of the terms contained herein; provided, however, that, after this Agreement is adopted by the Company's stockholders pursuant to Section 6.03, no such amendment or modification shall reduce the amount or change the form of the consideration to be delivered to the stockholders of the Company.

10.02. Waiver of Compliance; Consents. Any failure of either the Parent or the Subsidiary, on the one hand, or the Company, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by the Company or the Parent, respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 10.02. The Subsidiary hereby agrees that any consent or waiver of compliance given by the Parent hereunder shall be conclusively binding upon it, whether given expressly on its behalf or not.

10.03. Investigations; Survival of Warranties. The respective representations and warranties of the Parent and the Subsidiary and the Company contained herein or in any certificates or other documents delivered prior to or at the Closing shall not be deemed waived or otherwise affected by any investigation made by any party hereto. Each and every such representation and warranty shall expire with, and be terminated and extinguished by, the Merger, or the termination

of the Merger pursuant to Section 9.01. This Section 10.03 shall have no effect upon any other obligation of the parties hereto, whether to be performed before or after the Closing.

10.04. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):

(a) if to the Parent or the Subsidiary, to

The Pullman Company
182 Nassau Street
Princeton, New Jersey 08540
Attention: William D. Sivitz

with a copy to

Debevoise & Plimpton
875 Third Avenue
New York, New York 10022
Attention: Alan H. Paley, Esq.

(b) if to the Company, to

Clevite Industries Inc.
1275 Milwaukee Avenue
Glenview, Illinois 60025
Attention: John W. Puth

with a copy to

Sidley & Austin
One First National Plaza
Chicago, Illinois 60603
Attention: James J. Brennan, Esq.

Winston & Strawn
One First National Plaza
Chicago, Illinois 60603
Attention: Robert F. Wall, Esq.
James Doran, Esq.

10.05. Assignment; Parties in Interest. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties, provided that the Parent or the Subsidiary may assign its respective rights and obligations to any direct or indirect subsidiary or affiliate of the Parent, but no such assignment shall relieve the Parent and the Subsidiary of their obligations hereunder. It is also agreed that Parent may assign its shares of stock in the Subsidiary to one or more wholly owned subsidiaries of the Parent, with the result that prior to the Merger the Subsidiary is wholly owned by such intermediate subsidiaries.

10.06. Governing-Law. This Agreement shall be governed by the laws of the State of Delaware (regardless of the laws that might otherwise govern under applicable principles of conflicts of law) as to all matters, including but

not limited to matters of validity, construction, effect, performance and remedies.

10.07. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.08. Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement. As used in this Agreement, (i) the term "person" shall mean and include an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof; (ii) the terms "affiliate" and "associate" shall have the meanings set forth in Rule 12b-2 of the General Rules and Regulations promulgated under the Exchange Act; and (iii) the term "subsidiary" of any specified corporation shall mean any corporation of which the outstanding securities having ordinary voting power to elect a majority of the board of directors are directly or indirectly owned by such specified corporation.

10.09. Entire Agreement. This Agreement, including the exhibits hereto and the documents and instruments referred to herein and the Confidentiality Agreement and Standstill Agreement, dated April 10, 1987, embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, representations, warranties, covenants, or undertakings, other than those expressly set

forth or referred to herein. This Agreement supersedes all prior agreements and the understandings between the parties with respect to such subject matter.

IN WITNESS WHEREOF the Parent, the Subsidiary and the Company have caused this Agreement to be signed by their respective duly authorized officers on the date first above written.

THE PULLMAN COMPANY

By S/S
Title

PCII ACQUISITION COMPANY

By S/S
Title

CLEVITE INDUSTRIES INC.

By S/S
Title

Certain Conditions of the Offer. Notwithstanding any other provision of the Offer the Subsidiary shall not be required to accept for payment or pay for any Shares tendered, and may terminate or amend the Offer or postpone the purchase of and payment for Shares tendered, if (1) the Rights have become exercisable or separately tradable from the Shares, (2) a number of Shares (including Shares purchasable upon exercise of tendered Warrants) which, when added to Shares owned by the Subsidiary and the Parent, is equal to at least a majority of the outstanding Shares on a fully diluted basis (other than dilution due to the Rights), (3) the Company shall have materially breached or failed in any material respect to comply with any of its obligations under the Merger Agreement, or any representation or warranty contained in the Merger Agreement shall have been materially inaccurate when made or thereafter, (4) on or after May 23,1987 and prior to the time of payment for any such Shares (whether or not any Shares have theretofore been accepted for payment or paid for pursuant to the Offer), any one or more of the events listed in the following paragraphs shall occur:

(a) there shall have occurred (i) any general suspension of, or limitation on prices for, trading in securities on the NYSE, (ii) the declaration of a banking moratorium or any suspension of payments in respect of banks in the United States, (iii) commencement of a war, armed hostilities or other international or national calamity affecting the United States, (iv) any limitation by any governmental authority on, or any other event which might affect, the extension of credit by banks or other lending institutions, or (v) in the case of any of the foregoing existing at the time of the commencement of the

Offer, in the judgment of the Parent or the Subsidiary, a material acceleration or worsening thereof; or

(b) any change shall have occurred or been threatened in the business, properties, assets, financial condition, operations, results of operations or prospects of the Company or any of its subsidiaries that, in the reasonable judgment of the Parent or the Subsidiary, is or may be materially adverse to the Company and its subsidiaries, taken as a whole, or the Subsidiary shall have become aware of any fact that, in the reasonable judgment of the Parent or the Subsidiary, has material adverse significance with respect to the value of the Shares to the Subsidiary; or

(c) a tender or exchange offer for any shares of capital stock of the Company shall have been made or publicly proposed to be made by another person, or it shall have been publicly disclosed or the Subsidiary shall have learned that (i) any person, entity or "group" (as that term is used in Section 13(d)(3) of the Exchange Act) shall have acquired, or proposed to acquire, more than 20% of any class or series of capital stock of the Company including the Shares, or shall have been granted any option or right, conditional or otherwise, to acquire more than 20% of any class or series of capital stock of the Company (including the Shares), other than acquisitions for bona fide arbitrage purposes and other than acquisitions by any person, entity or group which has publicly disclosed such ownership in a Schedule 13D or 13G (or an amendment thereto) on file with the Commission on or prior to May 23,1987, (ii) any such person, entity or group, which has publicly disclosed such ownership prior to such date shall have acquired or proposed to acquire more than 2% of any class or series of capital stock of the Company (including the Shares) or shall have been granted any option or right to

acquire more than 2% of any class or series of capital stock of the Company (including the Shares), (iii) any new group shall have been formed which beneficially owns more than 20% of either class of the Shares) or (iv) any person, entity or group shall have entered into a definitive agreement or an agreement in principle or made a proposal with respect to a tender offer or exchange offer for any shares of capital stock of the Company or a merger, consolidation, acquisition of assets or other business combination with or involving the Company;

(d) the Company and the Subsidiary shall have reached an agreement or understanding that the Offer be terminated or amended; or

(e) the Subsidiary shall have learned that any material amount of indebtedness of the Company or any of its subsidiaries shall become accelerated or otherwise become due prior to its stated due date, in either case with or without notice or the lapse of time or both, as a result of the transactions contemplated by the offer or the Merger; or

(f) there shall be instituted or pending (or threatened, if by any governmental authority or agency) any action or proceeding by or before any court or governmental authority or other regulatory or administrative agency or commission, domestic or foreign (i) challenging the acquisition by the Subsidiary of the Shares, or seeking to restrain or prohibit the consummation of the transactions contemplated by the Offer; (ii) seeking to prohibit the Subsidiary's (or any of its affiliates') ownership or operation of all or any portion of its or the Company's business or assets, or to compel the Subsidiary (or any of its affiliates) to dispose of or hold separate all or any portion of its own or the Company's business or assets as a

result of the transactions contemplated by the Offer; (iii) seeking to make the acceptance for payment of, or payment for, some or all of the Shares illegal or to delay the ability of the Subsidiary to accept for payment or pay for some or all of the Shares; (iv) seeking to impose material limitations on the ability of the Subsidiary (or any of its affiliates) effectively to acquire or hold or to exercise full rights of ownership of Shares, including, without limitation, the right to vote Shares purchased by it on all matters properly presented to the shareholders of the Company; (v) that if successful would be reasonably likely to prevent the financing of the Offer or the transactions contemplated thereby; or (vi) that may otherwise adversely affect the Company and its subsidiaries taken as a whole, or (if arising out of or relating to the offer or the Merger) the Parent and its subsidiaries taken as a whole; or

(g) any statute, rule, regulation or order shall be enacted, promulgated, entered, enforced or deemed applicable to the Offer or the Merger or any other action shall have been taken, proposed or threatened by any government, governmental authority or court, domestic or foreign, that might, directly or indirectly, result in any of the consequences referred to in clauses (i) through (vi) of paragraph (f) above; or

(h) the Company's Board of Directors shall have modified or amended in any respect the recommendation of the Offer, or shall have resolved to do so; which, in the sole judgment of the Subsidiary and regardless of the circumstances giving rise to any such condition, makes it inadvisable to proceed with the Offer or with such acceptance for payment or payment.

The foregoing conditions are for the sole benefit of the Subsidiary and may be asserted by the Subsidiary regardless of

the circumstances giving rise to any such conditions or may be waived by the Subsidiary in whole or in part at any time and from time to time in its sole discretion. The failure by the Subsidiary at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right, and each right shall be deemed an ongoing right which may be asserted at any time and from time to time.

CERTIFICATE OF INCORPORATION
OF
Clevite Industries Inc.

FIRST: The name of the Corporation is Clevite Industries Inc.

SECOND: The Corporation's registered office in the State of Delaware is at Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business of the Corporation and its purpose is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is 8,200,000 shares of Common Stock, par value $.01 per share.

FIFTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation and for the purpose of creating, defining, limiting and regulating the powers of the Corporation and its directors and stockholders:

(a) The number of directors of the Corporation shall be fixed and may be altered from time to time in the manner provided in the By-Laws, and vacancies in the Board of Directors and newly created directorships resulting from any increase in the authorized number of directors may be filled, and directors may be removed, as provided in the By-Laws.

(b) The election of directors may be conducted in any manner approved by the stockholders at the time when the election is held and need not be by ballot.

(c) All corporate powers and authority of the Corporation (except as at the time otherwise provided by law, by this Certificate of Incorporation or by the By-Laws) shall be vested in and exercised by the Board of Directors.

(d) The Board of Directors shall have the power without the assent or vote of the stockholders to adopt, amend, alter or repeal the By-Laws of the Corporation, except to the extent that the By-Laws or this Certificate of Incorporation otherwise provide.

(e) No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as a director, provided that nothing contained in this Article shall eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) under Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit.

SIXTH: The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights herein conferred upon stockholders or directors are granted subject to this reservation.

Form **5310**

(Rev. April 1988)

Department of the Treasury
Internal Revenue Service

Pension Benefit Guaranty Corporation

Application for Determination Upon Termination; Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities; Notice of Intent To Terminate

Under sections 401(a) and 6058(b) of the Internal Revenue Code and section 4041(a) of the Employee Retirement Income Security Act of 1974)

OMB No. 1545-0202
Expires 4-30-91

For Agency Use Only

Complete every applicable part of this form. If an item in an applicable part does not apply, enter N/A.
Multiemployer plans covered by PBGC insurance program, see Purpose on page 1 of the instructions.

Reason for filing (check applicable box(es); see General Instructions):

A ☒ Notice of plan—(-) Merger, (-) Consolidation, or (x) Transfer of plan assets or liabilities to another plan

B ☐ Application for ONLY an Internal Revenue Service (IRS) determination letter regarding a plan termination (This is NOT a notice of intent to terminate for the Pension Benefit Guaranty Corporation.)

C ☐ Defined benefit plan filing "ONE STOP" for
(1) Notice of intent to terminate under the Pension Benefit Guaranty Corporation (PBGC) termination insurance program AND
(2) Application for an IRS determination letter upon plan termination.
(One Stop filing is a voluntary choice in lieu of separate filings under B and D. It is NOT available when the Enrolled Actuary Certification Program is being used.)

D ☐ Defined benefit plan filing ONLY a notice of intent to terminate under the PBGC termination insurance program. (This is NOT a request for an IRS determination letter.)

E ☐ Enrolled Actuary Certification for a defined benefit plan filing ONLY a notice of intent to terminate under the PBGC termination insurance program

Part I All Filers Complete This Part

1 (a) Name of plan sponsor (see instructions):
The Pullman Company

1 (b) Employer identification number
22 : 0359911

Address (number and street)
152 Nassau Street

1 (c) Sponsor's telephone number
(609) 683-1770

City or town, state, and ZIP code
Princeton, NJ 08540

1 (d) Employer's tax year ends:
Month 9 Day 30 Year 1989

2 (a) Name of plan administrator (if same as 1(a), enter "same")
Administrative Committee

1 (e) Business code number
3799

Address (number and street)
c/o The Pullman Company 152 Nassau Street

1 (f) Date business incorporated or began
1926

City or town, state, and ZIP code
Princeton, NJ 08540

2 (b) Administrator's employer identification number
(same as 1 (b))

2 (c) Administrator's telephone number
(609) 683-1770

2 (d) Name, address, and telephone number of person to be contacted if more information is needed (see instructions).
Name John T. Bernard, Esquire Telephone number (215) 496-4861
Address Dilworth, Spahr, Andrews & Ingersoll, 30 S. 17th Street, Philadelphia, PA 19103

2 (e) Office of the District Director of the key district where sponsor is located (see instructions): Baltimore, MD

3 If you checked reason for filing B, C, D, or E, has each party who is required to be notified been properly informed of the filing (see instructions)? ☐ Yes ☐ No

4 Type of plan entity (check only one box, see instructions)
(a) ☒ Single employer plan
(b) ☐ Plan of commonly controlled group of corporations or trades or businesses under common control
(c) ☐ Multiple employer (collectively bargained plan (other than a multiemployer plan)
(d) ☐ Multiemployer plan (other)
(e) ☐ Other (specify) _____

5 (a) Plan name
Clevite Industries Inc Hourly Retirement Plan

(b) Plan number
0 0 3

(c) Plan year ends
12/31

6 (a) Is this a defined benefit plan covered under the Pension Benefit Guaranty Corporation termination insurance program (see Part IV instructions)? (i) ☒ Yes (ii) ☐ No (c) ☐ Not determined

(b) If you checked "Yes" or "Not determined," have you ever used an employer identification number or plan number in any prior filing with PBGC other than the ones entered on lines 1(b) or 5(b) above? ☒ Yes ☐ No
If "Yes," enter the number(s) previously reported ▶ 34-0781590 (Clevite Industries Inc formerly Lorain, Ohio) 36-3443... Inc. merged with The Pullman Company in September 1987.

7 Indicate type of plan (see General Instruction E).
(a) ☒ Defined benefit (b) ☐ Money purchase (c) ☐ Profit-sharing (d) ☐ Fixed benefit (e) ☒ Unit benefit (f) ☐ Other (specify) ▶ (g) ☐ Flat benefit

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signature ▶ _____ Title ▶ Vice Pres. - Personnel Date ▶ 11/14/89

Signature ▶ _____ Title ▶ Date ▶

For Paperwork Reduction Act Notice, see page 1 of the instructions.

Form 5310 (Rev. 4-88)

00036

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Complete This Part If You Checked Reason for Filing A

8 Other plan(s) involved in this action (see instructions)

(a) Plan name SEE ATTACHMENT | (b) Name of employer

(c) Employer identification number | (d) Plan number | (e) Date of merger, consolidation or transfer

(f) If the plan listed in 5(a) is a defined benefit plan, attach an actuarial statement of valuation evidencing compliance with the requirements of Code section 401(a)(12) and the income Tax Regulations under Code section 414(l).

Complete This Part If You Checked Reason for Filing B, C, D, or E

If you checked reason for filing E, complete only 9, 10(a), (b), 11(a) and 12.

9 Effective date of plan

		Yes	No
10	(a) Has the plan ever received an IRS determination letter?		
	(b) If (a) is "Yes," enter the file folder number and date of the most recent determination letter and complete (d) through (g). File folder No. ..... Date ▶		
	(c) If (a) is "No" and your reason for filing is B or C, attach a copy of the executed original plan document or order/adoption agreement, all plan amendments, trust agreement, group annuity contracts and custodial agreements (do not complete (d) through (g)).		
	(d) If (a) is "Yes," has the plan been amended since the last determination letter?		
	(e) If (d) is "Yes," and your reason for filing is B or C, attach a copy of the amendment(s) and complete (f) and (g).		
	(f) Do any of the amendments affect the plan's vesting provisions?		
	(g) Do any of the amendments (including the termination) decrease plan benefits? (See instructions)		

11 (a) Proposed date of plan termination ▶ .....

(b) Attach copies of records of all actions taken to terminate the plan (see instructions).

(c) Last contribution to the plan:
(i) Date (ii) Amount (see instructions) $ (iii) For plan year ended

12 Reason for termination (check only one box to indicate primary reason for termination):

(a) ☐ Change in ownership by merger
(b) ☐ Liquidation or dissolution of employer
(c) ☐ Change in ownership by sale or transfer
(d) ☐ Adverse business conditions (see instructions and attach explanation)
(e) ☐ Adoption of new plan (see instructions and attach explanation)
(f) ☐ Other (specify) ▶

13 Indicate funding arrangement:

(a) ☐ Trust (benefits provided in whole from trust funds)
(b) ☐ Trust or other arrangement providing benefits partially through insurance and/or annuity contracts
(c) ☐ Trust or other arrangement providing benefits exclusively through insurance and/or annuity contracts
(d) ☐ Custodial account described in Code section 401(f) and not included in (c) above
(e) ☐ Other (specify) ▶

14 (a) Name(s) of trustee(s) or custodian(s) | (b) Date trust's accounting period ends

Address (number and street)

City or town, state, and ZIP code

		Yes	No	Not Certain
15	Participation (see instructions). Collectively bargained plans and plans filing only a notice of intent to terminate (reason for filing D) do not complete (a) and (c).			
	(a) (i) Is the employer a member of an affiliated service group? If there is uncertainty whether the employer is a member of an affiliated service group, check the "Not Certain" column.			
	(ii) If (i) is "Yes" or "Not Certain," did a prior ruling letter rule on what organizations were members of the employer's affiliated service group or did the employer receive a determination letter on the plan that considered the effect of Code section 414(m)?			
	(iii) If (ii) is "Yes," have the facts on which that letter was based materially changed?			
	(b) Is the employer a member of a controlled group of corporations or a group of trades or businesses under common control?			

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ATTACHMENT TO FORM 5310
CLEVITE INDUSTRIES INC
HOURLY RETIREMENT PLAN
EIN: 02-0359911

Part II, Item 8 Other plans involved in the merger/spin-off.

Plans numbered 1 through 12 and the plan named in the title above will be merged as of 12/31/88 into the Peabody International Corporation Retirement Plan (plan number 4) which will be renamed The Pullman Company Retirement Plan and reported under The Pullman Company's EIN: 02-0359911 as Plan number 001. Plans numbered 13 and 14, covering union employees formerly covered by plans numbered 1 and 6, will be spun-off from the plan resulting from the merger as of 12/31/88. Plan number 15, covering hourly employees formerly covered by plan number 1, will also be spun-off as of 12/31/88.

1. (a) Name of Plan: Clevite Industries Inc Certain Hourly Retirement Plan
   (b) Name of Employer: The Pullman Company
   (c) Employer identification number: 02-0359911
   (d) Plan number: 005
   (e) Date of merger: 12/31/88

2. (a) Name of Plan: Clevite Industries Inc Salaried Retirement Plan
   (b) Name of Employer: The Pullman Company
   (c) Employer identification number: 02-0359911
   (d) Plan number: 002
   (e) Date of merger: 12/31/88

3. (a) Name of Plan: Imperial Eastman Division

Retirement Plan

(b) Name of Employer: The Pullman Company

(c) Employer identification number: 02-0359911

(d) Plan number: 001

(e) Date of merger: 12/31/88

4. (a) Name of Plan: Peabody International Corporation Retirement Plan

(b) Name of Employer: Peabody International Corporation

(c) Employer identification number: 34-4412262

(d) Plan number: 001

(e) Date of merger: 12/31/88

5. (a) Name of Plan: Peabody International Corporation Retirement Plan-Peabody Engineering

(b) Name of Employer: Peabody Engineering Corporation

(c) Employer identification number: 13-1154870

(d) Plan number: 001

(e) Date of merger: 12/31/88

6. (a) Name of Plan: Peabody International Corporation-Star Hourly Pension Plan

(b) Name of Employer: Peabody International Corporation

(c) Employer identification number: 34-4412262

(d) Plan number; 004

(e) Date of merger: 12/31/88

7. (a) Name of Plan: Peabody International Corporation-Winesburg Hourly Pension Plan

(b) Name of Employer: Peabody International Corporation

(c) Employer identification number: 34-4412262

(d) Plan number: 009
(e) Date of merger: 12/31/88

8. (a) Name of Plan: Peabody-Myers Corporation Hourly Pension Plan
(b) Name of Employer: Peabody-Myers Corporation
(c) Employer identification number: 37-0434279
(d) Plan number: 001
(e) Date of merger: 12/31/88

9. (a) Name of Plan: Peabody Noise Control Hourly Pension Plan
(b) Name of Employer; Peabody Noise Control Inc.
(c) Employer identification number: 31-4426774
(d) Plan number: 002
(e) Date of merger: 12/31/SO

10. (a) Name of Plan: Pension Plan for Bantam Hourly Employees of PTC Aerospace Inc.
(b) Name of Employer: PTC Aerospace Inc.
(c) Employer identification number: 02-0376159
(d) Plan number: 004
(e) Date of merger: 12/31/88

11. (a) Name of Plan: FTC Aerospace Pension Plan
(b) Name of Employer: PTC Aerospace Inc.
(c) Employer identification number: 02-0376159
(d) Plan number: 005
(e) Date of merger: 12/31/88

12. (a) Name of Plan: The Pullman Employees' Retirement Plan
(b) Name of Employer: The Pullman Company
(c) Employer identification number: 02-0359911

(d) Plan number: 008
(e) Date of merger: 12/31/88

13. (a) Name of Plan: Angola Hourly Bargaining Pension Plan
(b) Name of Employer: The Pullman Company
(c) Employer identification number: 02-0359911
(d) Plan number: 005
(e) Date of spin-off: 12/31/88

14. (a) Name of Plan: Star Hourly Bargaining Pension Plan
(b) Name of Employer: The Pullman Company
(c) Employer identification number: 02-0359911
(d) Plan number: 006
(e) Date of spin-off: 12/31/88

15. (a) Name of Plan: Salem Hourly Pension Plan
(b) Name of Employer: The Pullman Company
(c) Employer identification number: 02-0359911
(d) Plan number: 011
(e) Date of spin-off: 12/31/88

Attachment to Item 8(f) of IRS Form 5310
Actuarial Statement of Valuation

To: The Plan Administrator of the Peabody International Corporation Retirement Plan, and

The Plan Administrator of the "Merging Plans":

- Clevite Industries Inc.Certain Hourly Retirement Plan
- Clevite Industries Inc. Hourly Retirement Plan
- Clevite Industries Inc. Salaried Retirement Plan
- Imperial Eastman Division Retirement Plan
- Peabody International Corporation Retirement Plan - Peabody Engineering
- Peabody International Corporation - Star Hourly Pension Plan
- Peabody International Corporation - Winesburg Hourly Pension Plan
- Peabody-Myers Corporation Hourly Pension Plan
- Peabody Noise Control Hourly Pension Plan
- Pension Plan for Bantam Hourly Employees of PTC Aerospace Inc.
- PTC Aerospace Pension Plan
- The Pullman Employees' Retirement Plan

Re: Merger of the above-referenced Merging Plans into the Peabody international Corporation Retirement Plan ("PICRP"), effective as of December 31, 1988 (the "Merger Cate")

Attachment to Item 8(f) of IRS Form 5310
Actuarial Statement of Valuation

The above referenced plans are being amended to provide for the transfer of all assets and liabilities of the merging Plans into the PICRP effective December 31, 1988. It is anticipated that, as of the Merger Date, the assets of the merged plan will exceed the present value of all accrued benefits, based on reasonable actuarial assumptions. In that event, the requirements of Sections 401(a)(12) and 414(1) of the Internal Revenue Code of 1986, as amended, will be satisfied by merely combining the assets of all plans and preserving each participant's accrued benefit.

If the assets of the merged plan do not exceed the present value of accrued benefits as of the merger Date, provision will be made for the necessary data to be maintained by The Pullman Company so that if the PICRP terminates or if there is a spin off (other than a de minimis spin off) within five years after the merger, an allocation of assets can be made in accordance with the provisions of the Plan and, with the insertion of a special schedule of benefits to modify the allocation (pursuant to Section 4044 of ERISA), in accordance with Code section 414(1) and Regulation 1.414(1)-1. Based on a statement from the Plan Administrator, we certify that each element of data necessary to determine the special schedule will be maintained in the even that assets do not exceed the present value of accrued benefits as of the Merger Date.

The merger of assets and liabilities described above should comply with the requirements of Sections 401(a)(12) and 414(1) of the Internal Revenue Code of 1986, as amended, since provision has been made to ensure that each participant in the PICRP would (if the plan then terminated) receive a

benefit immediately after the merger which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger (if the individual plans had then terminated).

Respectfully submitted,

HEWITT ASSOCIATES

S/S

Laura M. Watson

Enrolled Actuary No. 4109
November 30, 1988

Attachment to Item 8(f) of IRS Form 5310
Actuarial Statement of Valuation

To: The Plan Administrator of the Peabody International Corporation Retirement Plan, and

The Plan Administrator of the "Spin-off Plans":

- Angola Hourly Bargaining Pension Plan
- Star Hourly Bargaining Pension Plan
- Salem Hourly Pension Plan

Re: Transfer of Assets and Liabilities from the Peabody International Corporation Retirement Plan ("PICRP") to the Spin-off Plans

Effective December 31, 1988, PICRP will be amended to provide for the following transfer of assets and liabilities:

- Assets and liabilities associated with union employees of the Elastomer Division located at Angola, Indiana who formerly participated in the Clevite Industries Inc. Certain Hourly Retirement Plan (which has been merged into PICRP) will be transferred into the Angola Hourly Bargaining Pension Plan.

- Assets and liabilities associated with union employees of The Star Manufacturing Company who formerly participated in the Peabody International Corporation - Star Hourly Pension Plan (which has been merged into PICRP) will be transferred into the Star Hourly Bargaining Pension Plan.

- Assets and liabilities associated with employees of the Ferralcy Division located at Salem, Indiana who formerly participated in the Clevite Industries Inc. Certain Hourly Retirement Plan (which has been merged into PICRP) will be transferred into the Salem Hourly Pension Plan.

After this transaction, all of the accrued benefits of each participant will be allocated to only one plan, and the value of assets spun off to each plan will equal or exceed the present value of the accrued benefits spun off to that plan.

If total plan assets exceed the present value of accrued benefits in PICRP at December 31, 1988, based on reasonable actuarial assumptions, the value of assets allocated to the spun-off plans will be determined in accordance with Section 414(1) of the Internal Revenue Code of 1986, as amended to provide for the sharing of excess assets.

Attachment to item 8(f) of IRS Form 5310
Actuarial Statement of Valuation

In this case, the regulations of Sections 401(a)(12) and 414(1) will be satisfied because the value of assets allocated to each of the plans (including the PICRP) will exceed the present value of benefits accrued before the spin off, on a termination basis, for all participants in each plan.

It total plan assets do not exceed the present value of all accrued benefits, based on reasonable actuarial assumptions, as of December 31, 1988, the value of assets allocated to the spun-off plans will equal the present value of the accrued benefits spun off. The sum of the assets so allocated to the three spun-off plans (the only spin-offs to occur during this plan year) constitute less than 3 percent of total plan assets as of December 31, 1988. Thus, the spin-offs will comply with the deminimis rule in subsection (n)(2) of Regulation 1.414(1)-1, hence, should satisfy the requirements of Sections 414(1) and 401(a)(12) of the Internal Revenue Code of 1986, as amended.

Respectfully Submitted,

HEWITT ASSOCIATES

S/S

Laura M. Watson
Enrolled Actuary No. 4109
November 30, 1988

Form **2848-D**
(Rev. February 1995)
Department of the Treasury
Internal Revenue Service

Tax Information Authorization and Declaration of Representative

▶ See separate instructions.

OMB No. 1545-0150
Expires 12-31-95

Part I Tax Information Authorization

For IRS Use Only
File No.
Level
Received
Powers
Sent T
Action
Ref. no.

Please type or print

Taxpayer(s) name(s)
The Pullman Company

Taxpayer identification number
22-0359911

Address (number and street)
192 Nassau Street

Plan number (if applicable)
303

City, state, and ZIP code
Princeton, NJ 08540

Telephone number
(609)683-1770

I/we hereby appoint the following individual(s)

Name	CAF number	Address	PTIN	Telephone number
See attachment		Ballard, Spahr, Andrews & Ingersoll 30 South 17th Street Philadelphia, PA 19103		(215) 564-1822

to receive from or inspect confidential tax information in any office of the Internal Revenue Service for the following tax matter(s)

Type of tax (individual, corporate, etc.)	Federal tax form number (1040, 1120, etc.)	Year(s) or period(s) (Date of death, if estate tax)
Flowrite Industries Inc Hourly Retirement Plan	5310	1988 - 1990

Initial here ▶ _____ if you do NOT want the designee(s) named above to act as the representative(s) of the taxpayer(s) before the Internal Revenue Service and to make written or oral presentations of fact or argument on behalf of the taxpayer(s) for the above tax matters.

☐ Send originals of all notices and all other written communications in proceedings involving the above tax matters to the appointee first named above, and a duplicate of all notices and all written communications to the taxpayer named above, or

☒ Send copies of all notices and all other written communications (excluding refund checks and routine mailings of tax forms) addressed to the taxpayer(s) in proceedings involving the above tax matters to

1 ☐ the representative first named above, or

2 ☒ (names of not more than two of the representatives named above) John M. Bernard, Esquire

Unless stated to the contrary below, this tax information authorization automatically revokes all earlier tax information authorizations, but does NOT revoke earlier powers of attorney on file with the Internal Revenue Service for the tax matters and years or periods covered by this authorization.

NONE
(Specify any exceptions to the above relating to other powers and matters.)

Signature of or for taxpayer(s).

(If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this tax information authorization on behalf of the taxpayer.)

[signature] Vice Pres. - Personnel 12/28/94
(Signature) (Title, if applicable) (Date)

(Type or print your name below signature for a taxpayer who is not an individual.)

Wesley J. Lacer
(Signature) (Title, if applicable) (Date)

*If you initial the space, this authorizing your designee(s) only to receive and inspect confidential information about your tax matters. Your designee(s) may be an organization, firm, or partnership. If you do not initial the space, meaning that your designee(s) act as your representative(s), your representative must be an individual who must complete Part II.

For Privacy Act and Paperwork Reduction Act Notices, see page 1 of the separate instructions. Form **2848-D** (Rev. 2-95)

BEST AVAILABLE COPY

ATTACHMENT TO FORM 2848 OR 2848-D

PART 1: TAX INFORMATION AUTHORIZATION

The taxpayer hereby appoints the following individuals:

Name	CAF No.	Telephone No.
Robert L. Abramowitz,. Esq.	7805-35162R	215-363-4810
John M. Bernard, Esq.	2005-04559R	215-636-4667
Joan Corcoran, Esq.		215-636-4854
Brian J. Dougherty, Esq.	2605-19966R	215-636-4834
Ian A. Herbert, Esq.		215-636-4934
Joel E. Horowitz, Esq.	2005-11927R	215-636-4945
Lawrence J. Kramer, Esq.	2005-04559R	215-636-4901
Edward I. Leeds, Esq.	2605-22113R	215-636-4906
Richard L. Switzer, Esq.		215-636-4646
Carol A. Weiser, Esq.	2005-25813R	215-636-4823

The address of each of the individuals named above is:

Ballard, Spahr, Andrews & Ingersoll
30 S. 17th Street
Philadelphia, PA 19103

ATTACHMENT TO FORM 2848 OR 2848-D

PART IT: DECLARATION OF REPRESENTATIVE

We, the undersigned, hereby declare that each of us is a member in good standing of the bar of the Supreme Court of Pennsylvania, the highest court of the Commonwealth of Pennsylvania; that each of us is aware of Treasury Department Circular No. 230 as amended (31 C.F.R. Part 10), Regulations governing the practice of attorneys; that none of us is currently under suspension of disbarment from practice before the Internal Revenue Service; and that each of us is authorized to represent the taxpayer(s) named on the first page hereof.

S/S
Robert L. Abramowitz

S/S
John M. Bernard

S/S
Joan M. Corcoran

S/S
Brian J. Dougherty

S/S
Joel E. Horowitz

S/S
Lawrence J. Kramer

S/S
Edward I. Leeds

S/S
Richard L. Switzer

S/S
Carol A. Weiser

THE PULLMAN COMPANY
RETIREMENT PLAN
AMENDED AND RESTATED

EFFECTIVE JANUARY 1, 1989

THE PULLMAN COMPANY
RETIREMENT PLAN

WHEREAS, Peabody Galion Corporation (now known as Peabody International Corporation) adopted the Peabody Galion Corporation and Related Employers Retirement Plan effective September 1, 1970, which plan was a continuation of certain earlier plans effective in 1943, for certain of its employees; and

WHEREAS, the Peabody Galion Corporation and Related Employers Retirement Plan was amended and restated effective October 1, 1976 and renamed the Peabody International Corporation Retirement Plan; and

WHEREAS, the Peabody International Corporation Retirement Plan has since been amended from time to time and was amended in its entirety and restated effective October 1, 1980 and October 1, 1985; and

WHEREAS, with the consent of the Peabody International Corporation, The Pullman Company has assumed sponsorship of the Peabody International Corporation Retirement Plan and wishes to rename the Plan "The Pullman Company Retirement Plan", to amend and restate the Plan to comply with the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and with the Internal Revenue Code of 1986 (the "Code"), as amended, and to effectuate certain other changes; and

WHEREAS, The Pullman Company desires to amend the Clevite Industries Inc Salaried Retirement Plan, the Peabody International Corporation Retirement Plan-Peabody Engineering, the FTC Aerospace Pension Plan, The Pullman Employees' Retirement Plan, the Clevite Industries Inc Certain Hourly Retirement Plan, the Imperial Eastman Division Retirement Plan, the Clevite Industries Inc Hourly Retirement Plan, the Peabody International Corporation Winesburg Hourly Pension Plan, the Peabody-Myers Corporation Hourly Pension Plan, the Peabody Noise Control Hourly Pension

Plan, the Peabody International Corporation-Star Hourly Pension Plan and the Pension Plan for Bantam Hourly Employees of PTC Aerospace Inc. to comply with ERISA and the Code with respect to plan years beginning prior to January 1, 1989, and to merge the aforesaid plans into the Peabody International Corporation Retirement Plan as renamed the "The Pullman Company Retirement Plan", effective January 1, 1989;

NOW, THEREFORE, effective January 1, 1989 (except as otherwise set forth herein), the Peabody International Corporation Retirement Plan is continued. amended and restated as "The Pullman Company Retirement Plan", as hereinafter set forth:

ARTICLE I
DEFINITIONS

Except where otherwise clearly indicated by context, the masculine shall include the feminine and the singular shall include the plural, and vice-versa. Any term used herein without an initial capital letter, that issued in a provision of the Code with which this Plan must comply to satisfy section 401(a) of the Code, shall be interpreted as having the meaning used in such provision of the Code, if necessary for the Plan to comply with such provision.

"Accrued Benefit" means, for any Participant as of any date, the amount of benefit earned to such date, payable as a single life annuity beginning at the Participant's Normal Retirement Date (or immediately, if the Participant has passed his Normal Retirement Date and is still an Employee) calculated in accordance with Section 5.1.

SCHEDULE D-1

PRIOR PLANS - ALL SERVICE

"Prior Plans" shall include the following plans, each as in effect on December 31, 1988:

I. Clevite Industries Inc Salaried Retirement Plan

II. Peabody International Corporation Retirement Plan
Peabody Engineering

III. PTC Aerospace Pension Plan

IV. The Pullman Employees' Retirement Plan

V. Peabody International Corporation Retirement Plan

SCHEDULE D-2

PRIOR PLANS - FUTURE SERVICE

"Prior Plans" shall include the following plans, each as in effect on December 31, 1988:

I. Clevite Industries Inc Certain Hourly Retirement Plan

II. Imperial Eastman Division Retirement Plan

III. Peabody International Corporation Winesburg Hourly Pension Plan

IV. Peabody-Myers Corporation Hourly Pension Plan

V. Peabody Noise Control Hourly Pension Plan

VI. Pension Plan for Bantam Hourly Employees of PTC Aerospace Inc.

VII. Clevite Industries Inc Hourly Retirement Plan

VIII. Peabody International Corporation-Star Hourly Pension Plan

Internal Revenue Service
230 SOUTH DEARBORN STREET
CHICAGO IL 60604
In reply refer to: 36005182
JULY 11, 1986 LTR 835C23-0781590P
01872

IMPERIAL CLEVITE INC
c/o THOMAS F FINCH
MCDERMOTT WILL & EMERY
111 W MONROE ST
CHICAGO IL 60603

District office Code and
Cast Serial Number: 366079067 EP
Name of Plan: Hourly Retirement Plan
Application Form: 5300
Date Amended: Dec. 21, 1984
Employer Identification Number: 23-0781590
Plan Number: 003
File Number: 360002445.

Dear Applicant:

Based on the information supplied, we have made a favorable determination on your application identified above. Please keep this letter in your permanent records.

Continued qualification of the plan will depend on its effect in operation under its present form. (Set section 1.401-1(b)(3) of the Income Tax Regulations.) The status of the plan in operation will be reviewed periodically.

The enclosed document describes some events that could occur after you receive this letter that would automatically nullify it without specific notice from us. The document also explains how operation of the plan may affect a favorable determination letter, and contains information about filing requirements.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other Federal or local statutes.

This letter also applies to your amendment adopted October 3, 1985.

This determination expresses an opinion on whether the amendment(s), in and of itself (themselves), affect(s) the continued qualified status of the plan under Code section 401 and the exempt status of the related trust under section 501(a). This determination should not be construed as an opinion on the qualification of the plan as a whole and the exempt status of the related trust as a whole.

We have sent a copy of this letter to your representative as indicated in the power of attorney.

If you have any questions, please contact E Gardner at

IMPERIAL CLEVITE INC
c/o THOMAS F FINCH
MCDERMOTT WILL & EMERY
111 W MONROE ST
CHICAGO IL 60 6 0 3

612-725-5826.

Enclosure(s):
Pub 794
Opw-bp-5 1 5

Sincerely yours,

S/S

District Director

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Glenn E. Johnson, Richard H.Hunger, Lloyd L. Betcher and Lawrence F. Possehl, on behalf of themselves and all others similarly situated,

Case No.: Civil 3-91-471

Plaintiffs,

V. AFFIDAVIT OF FREDERICK S. MUENKEL

AB, CD, EF and GH, whose true and correct names are unknown, Plan Administrators, Fiduciaries, Named Fiduciaries,
Committee Members and
Trustees of the Clevite
Industries Inc. Hourly
Retirement Plan,
Clevite Industries Inc.
Hourly Retirement Plan,
The Pullman Company, a
Clevite Industries, Inc.

Defendants.

I, Frederick S. Muenkel, declare under penalty of perjury that the following is true and correct:

1. I am President of Local Lodge 650 of the International Union of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO ("Local 650"). I have held this position since 1990.

2. I am currently an employee of AE Piston Products, Inc., formerly known as JPI, Incorporated.

3. On February 16, 1987, I was employed by Clevite Industries, Inc. Engine Parts Division in Lake City Minnesota, before it was sold to JPI, Inc.

4. Hourly employees of the Engine Parts Division were represented by Local 650.

5. As part of the collective bargaining agreement between Local 650 and Clevite, Plaintiffs were covered by the Clevite Industries, Inc. Hourly Retirement Plan (the "Plan"). The Plan provided for a Normal Retirement Benefit payable at age 65. See Exhibit A to this Affidavit.

6. Qualified participants who retired before age 65 under the Plan were originally entitled to a normal retirement benefit reduced by .5% per month for each month before the participant's sixty-fifth birthday. See Exhibit 3 to Defendants' Memorandum of Law in Support of Motion to Dismiss or for Summary Judgment as to Counts II through VIII of the Complaint (previously filed in this action on February 7, 1992) at p. 20.

7. The Plan was amended, however, in conjunction with the collective bargaining agreement, to provide for what was known as the "early retirement subsidy". This subsidy enabled a participant to retire under certain circumstances before age sixty-five with a normal retirement benefit reduced by only .2% per month, instead of .5% per month as had previously been the case. See Exhibit 3 to Defendants' Memorandum of Law in support of Motion to Dismiss or for Summary Judgment as to Counts II through VIII of the Complaint (previously filed in this action on February 7, 1992) at Amended Supplement One, page 3.

8. On February 17, 1987, JPI Merger, Inc., a subsidiary of J.P. Industries, Inc. ("JPI"), purchased the assets of the EPD. JPI did not, however, purchase the assets of the Plan, which were retained by Clevite. See Exhibit 1 to Defendants' Memorandum of Law in Support of Motion to Dismiss or for

Summary Judgment as to Counts II through VIII of the Complaint (previously filed in this action on February 7, 1992).

9. My job with JPI, and the jobs of other unit members, including Plaintiffs, did not change as a result of the asset purchase. We continued to perform the same jobs at the same location with no interruption in operations. The unit remained the same, with essentially the same number and identity of employees.

10. Pullman informed me, and Plaintiffs reported to me that Pullman informed them by memorandum dated August 1988, that benefits would be frozen and accrued benefits would be fully vested. Pullman did not mention rights to receive the early retirement subsidy. See Exhibit 19 to Defendants' Memorandum of Law in Support of Motion to Dismiss or for Summary Judgment as to Counts II through VIII of the Complaint (previously filed in this action on February 7, 1992).

11. Pullman sent me, and Plaintiffs reported to me that Pullman also sent them individual statements, along with a document entitled "Supplemental Administrative Information Engine Parts Division Retirement Plans". The statements showed retirement benefit under various circumstances but did not include the early retirement subsidy. Instead, the statements indicated that early retirees would have their benefit reduced by a full .5% per month for each month they were under age sixty five. See Exhibit 19 to Defendants' Memorandum of Law in Support of Motion to Dismiss or for Summary Judgment as to Counts II through VIII of the Complaint (previously filed in this action on February 7, 1992), and Exhibit B to this Affidavit.

12. Defendants have refused to pay me, and Plaintiffs reported to me that Pullman has refused to pay them, the early retirement subsidy. See Exhibit 4 to Defendants' Memorandum of Law in Support of Motion to Dismiss or for Summary Judgment as to Counts II through VIII of the

Complaint (previously filed in this action on February 7, 1992).

Dated: June 10, 1992

S/S

Frederick S. Muenkel

CERTIFICATE OF SERVICE

I certify that a true copy of this document was served by hand delivery or U.S. mail on the parties listed below on June 10, 1992:

Mr. David Hashmall Popham, Haik, Schnobrich
& Kaufman, Ltd.
3300 Piper Jaffray Tower
222 Ninth Street South
Minneapolis, MN 55402

Ms. Carol Mager
Mr. Brian Pedrow
Ballard, Spahr, Andrews &
Ingersoll
1735 Market St. - 51st Floor
Philadelphia, PA 19103

S/S

Signed: Teresa K. Fett

No. 93-1665

(3)

Supreme Court, U.S.
FILED
MAY 26 1994
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

RICHARD H. HUNGER, LLOYD L. BETCHER and LAWRENCE F. POSSEHL, on behalf of themselves and all other similarly situated,

Petitioners,

v.

AB, CD, EF and GH, whose true and correct names are unknown, PLAN ADMINISTRATORS, FIDUCIARIES, NAMED FIDUCIARIES, COMMITTEE MEMBERS AND TRUSTEES OF THE CLEVITE INDUSTRIES, INC. HOURLY RETIREMENT PLAN, THE PULLMAN COMPANY and CLEVITE INDUSTRIES, INC.,

Respondents.

Petition For Writ Of Certiorari To The United States Court of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

John B. Langel, Esquire
Brian D. Pedrow, Esquire*
BALLARD SPAHR ANDREWS & INGERSOLL
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103
(215) 665-8500
Counsel for Respondents
**Counsel of Record*

PACKARD PRESS / LEGAL DIVISION, 1617 JFK BOULEVARD, PHILA., PA 19103 (215) 563-9000

33 pp

QUESTION PRESENTED FOR REVIEW

Does the anti-cutback provision of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C.A. § 1054(g) (Supp. 1993), apply to and protect an early retirement subsidy in the absence of a plan amendment reducing or eliminating the subsidy with respect to plan participants who have not and cannot meet the age and service preconditions for the subsidy set forth in the plan document?

PARTIES TO THE PROCEEDING

The individuals and entities that are parties to this action are set forth in the caption to the case. However, in their Petition for Writ of Certiorari, Petitioners erroneously identified the petitioning parties to include "all others similarly situated" to the individually named petitioners. (Petition, at 2) The individually named Petitioners dismissed with prejudice all class allegations in the proceeding before the United States District Court for the District of Minnesota. (Stipulation and Order of The Honorable Paul A. Magnuson, March 13, 1992, reproduced in Respondents' Appendix, at 1a-3a)[1]

Pursuant to Rule 29.1 of the Rules of the Supreme Court of the United States, the corporate Respondents hereto, The Pullman Company and Clevite Industries, Inc., list the following parent companies and non-wholly owned subsidiaries:

The Pullman Company
Parent Company: Pullman Holding Corp.
Non-Wholly Owned Subsidiaries: None.

Clevite Industries, Inc.
Parent Company: The Pullman Company.
Non-Wholly Owned Subsidiaries: Avon-Clevite Ltd.

---

1. The Appendix filed with the Petition for Writ of Certiorari omitted several documents that were part of the record before the United States Court of Appeals for the Eighth Circuit. Respondents, therefore, have submitted their appendix herewith, which consists of the omitted documents.

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STATUTES

Internal Revenue Code, 26 U.S.C.A. § 401(a)(14), 402(e)(4)(A) (1988 & Supp. 1993) 12

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STATUTE WHICH THE CASE INVOLVES

Section 204(g) of ERISA, 29 U.S.C.A. § 1054(g) (Supp. 1993), provides with added emphasis:

> (g) ***Decrease of accrued benefits through amendment of plan***
>
> (1) The accrued benefit of a participant under a plan may not be decreased by an *amendment of the plan*, other than an amendment described in section 1082(c)(8) or 1441 of this title.
>
> (2) For purposes of paragraph (1), a plan amendment which has the effect of –
>
> (A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or
>
> (B) eliminating an optional form of benefit,
>
> with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. *In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy*. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

STATEMENT OF THE CASE

Petitioners Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl, were employed in the Engine Parts Division of Clevite Industries, Inc. ("Clevite") in Lake City, Minnesota, where they were participants in the Clevite Industries Inc. Hourly Retirement Plan (the "Clevite Plan").[1] (Complaint, ¶¶12, 19) Hereafter, petitioners are referred to as the "Plan Participants."

On February 17, 1987, Clevite sold the Engine Parts Division to JPI Acquisition, Inc. ("JPI"), a separate entity that has never had any affiliation with Clevite or The Pullman Company. As set forth in the Purchase Agreement between JPI and Clevite, JPI bought certain assets of the Engine Parts Division. JPI did not purchase other assets and did not assume liabilities or obligations of Clevite, including those relating to the Clevite Plan. The Purchase Agreement between Clevite and JPI provided that JPI shall not assume any "liabilities and obligations of [Clevite] with respect to or arising out of any . . . Pension Plans . . . or any incentive, pension, . . . or retirement plan, agreement or arrangement . . . ." (Petitioners' Appendix, at A126-A127)

Because Clevite retained all of the liabilities and assets of the Clevite Plan, JPI received no assets from the Plan. The Purchase Agreement between Clevite and JPI expressly provided:

> There shall be no transfer of assets from any Pension Plan to [JPI's] retirement plans (except as provided above with regard to the 401(k) Plan), and Transferred Employees shall look only to [Clevite] (and not [JPI]) with respect to any rights or interests they may have in any Employee Benefit Plan.

---

1. Until February 14, 1987, the plan was called the Imperial Clevite Inc. Hourly Retirement Plan, at which time the name was changed to the Clevite Industries Inc. Hourly Retirement Plan. (Petitioner's Appendix, at A107-A108) Herein, the term "Clevite Plan" will be used to refer to that plan.

(*Id.*, at A164)

Under the Clevite Plan, a participant who had ceased to be employed by Clevite after having completed 10 years of service, but who at the time of his termination of employment was not age 55, was entitled to a deferred vested retirement benefit. The participant was entitled to elect to have this benefit paid at or after his or her attainment of age 55. The deferred vested retirement benefit was the participant's normal retirement benefit beginning at age 65, actuarially reduced by .5% per month for each month that the participant's benefit commencement date preceded his or her 65th birthday, for a maximum of 120 months. (*Id.*, at A40)

The Clevite Plan also provided for an early retirement benefit payable at "Early Retirement Age." A participant attained Early Retirement Age, as defined in the Clevite Plan, only if he or she completed 10 years of service while employed by Clevite and attained age 55 while employed by Clevite. (*Id.*, at A27, A39) The Clevite Plan further stated that, in order to be eligible for the early retirement benefit, a "Member" had to terminate his or her "employment with the Company" after attaining his or her Early Retirement Age (*i.e.*, age 55 and 10 years of service). (*Id.*, at A39) The "Company" was defined as Clevite. (*Id.*, at A22, A107) The term "Member" likewise was defined as a participant who was an employee of Clevite or of a company affiliated with Clevite. (*Id.*, at A23-A25)

The early retirement benefit for a participant who retired between the ages of 55 and 65 was calculated with a .2% reduction factor for each of the first 60 months by which the participant's benefit commencement date preceded his or her 65th birthday, as compared to the deferred vested benefit which was calculated with a .5% reduction factor for the same period. Like the deferred vested retirement benefit, however, the early retirement benefit was calculated with a .5% reduction for each month (up to 60) by which the

participant's benefit commencement date preceded his or her 60th birthday. (*Id.*, at A39, A77)

Thus, the early retirement benefit is greater than the actuarially reduced, deferred vested retirement benefit because the early retirement benefit was subsidized by .3% (*i.e.*, the difference between .5% and .2%) for each of the first 60 months by which the participant's benefit commencement date preceded his or her 65th birthday. Hereinafter, this .3% difference is referred to as the "early retirement subsidy."

The essence of the Plan Participants' dissatisfaction with the plan administrators' consistent interpretation of the Clevite Plan is that – contrary to the plain language of the Plan itself which has existed since at least 1981 when the Plan initially was established and at all times thereafter – the Plan Participants believe that they should be permitted to satisfy the age and service requirements for the early retirement subsidy even though they no longer are employed by Clevite (*i.e.*, by counting their service with JPI). The plain language of the Clevite Plan provides, however, that only participants who attained age 55 and completed 10 years of service *while employed by Clevite* were eligible to receive the early retirement subsidy. Any participant who had not met those criteria before the sale of the Engine Parts Division to JPI could not thereafter become eligible for the early retirement subsidy because he or she no longer was employed by Clevite.

Each of the Plan Participants is entitled to a deferred vested benefit based on a .5% reduction, rather than an enhanced benefit based on the early retirement subsidy (*i.e.*, .2% reduction).[2] At the time of the sale of the Engine Parts Division and the termination of his employment with Clevite, Mr. Possehl was 55 years old and had been employed by Clevite for approximately 5 years;

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2. The Plan Participants have been advised of their entitlement to a deferred vested benefit (Petitioners' Appendix, at A175-A201), and the instant dispute is not related to this entitlement.

thus, he failed to meet the service requirement for the early retirement subsidy. Mr. Betcher was 50 years old and had been employed by Clevite for approximately 30 years; thus, he failed to meet the age requirement for the subsidy. Mr. Hunger was 49 years old and had been employed by Clevite for approximately 9 years; thus, he failed to meet both the age and service requirements for the subsidy. (*Id.*, at A175-A201) The Plan Participants have never disputed that they failed to meet these preconditions for the subsidy while in the employ of Clevite.

On May 23, 1987, several months after the assets of the Engine Parts Division were sold to JPI and former Engine Parts Division employees had become employees of JPI, The Pullman Company acquired the stock of Clevite. Thus, the Pullman Company, which had no affiliation with Clevite or JPI, became responsible for the Clevite Plan. The Pullman Company never became the Plan Participants' employer or the employer of anyone who had worked in the Lake City Engine Parts Division, which had been sold to JPI before The Pullman Company's acquisition of the stock of Clevite. (*See id.*, at A202-A263)

The Clevite Plan, prior to The Pullman Company's acquisition, was underfunded. On January 1, 1989, The Pullman Company merged the Clevite Plan and numerous pension plans associated with other companies (the stock of which were held by The Pullman Company) to form The Pullman Company Retirement Plan (the "Pullman Plan") and transferred all assets of the Clevite Plan and the other plans to the newly formed Pullman Plan. (*Id.*, A264-A278, A279-A283) The Plan Participants, therefore, became participants in the well-funded Pullman Plan, rather than the underfunded Clevite Plan.

On or about August 1, 1991, the Plan Participants filed suit in the United States District Court for the District of Minnesota. Among other claims, the Plan Participants asserted that Respondents had violated the

anti-cutback rule of ERISA.[3] On June 30, 1992, the district court granted the Respondent's motion for summary judgment on the anti-cutback claim and denied the Plan Participants' cross-motion, holding that the Plan Participants had not and could not meet the age and service conditions for the early retirement subsidy because they no longer were employed by Clevite. Accordingly, the district court found that the anti-cutback rule did not apply. (*Id.*, at A16-A17)

The United States Court of Appeals for the Eighth Circuit agreed. On December 17, 1993, the Court of Appeals affirmed the decision of the district court, finding that the Plan Participants had failed to demonstrate both that the Clevite Plan had been amended to reduce or eliminate the early retirement subsidy, and that the Plan Participants had satisfied or could satisfy the conditions for the subsidy. The Court of Appeals, therefore, held that the anti-cutback rule did not protect the subsidy. (*Id.*, at A6-A7) On January 21, 1994, the Eighth Circuit denied the Plan Participants' application for reargument.

SUMMARY OF THE ARGUMENT

The anti-cutback rule, without ambiguity, states that a retirement-type subsidy cannot be reduced or eliminated by plan amendment if the plan participants have met or can meet the preamendment conditions for the subsidy. Thus, in the absence of an amendment to the plan, *or*, in the absence of satisfaction of the preconditions for the subsidy, the rule has no application and extends no protection to a subsidy. The Eighth Circuit

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3. On March 13, 1992, after the Plan Participants acknowledged that seven of the eight counts of the Complaint were not well-grounded in fact and law, the district court dismissed with prejudice all seven counts and the class action allegations. (Respondents' Appendix, at 1a-3a) In addition, on May 27, 1992, again after the Plan Participants acknowledged that the claim of one of the named plaintiffs (Glenn E. Johnson) was not well-grounded in fact, he agreed to dismiss his claim with prejudice. (*Id.*, at 4a-6a)

held that the subsidy at issue here was not protected by the anti-cutback rule because the Clevite Plan had not been amended and, independently, because the Plan Participants could not satisfy the preconditions for the subsidy.

The Plan Participants contend that this Court should exercise its discretion to review this case because of a conflict between decisions of the Courts of Appeals regarding the application of the anti-cutback rule to plan participants who have not met the preamendment conditions for an early retirement subsidy prior to the transfer of their employment to a successor employer. Other than the Eighth Circuit, the only Court of Appeals that has addressed this issue is the Third Circuit in *Gillis v. Hoechst Celanese Corp.*, 4 F.3d 1137 (3d Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S. Ct. 1369, 1540 (1994), which held that a subsidy was protected. However, as the Eighth Circuit correctly found, the successor employer in *Gillis* had acquired *both* the pension plan's obligation to continue to provide the subsidy to the participants *and* the plan assets from the predecessor employer to pay for the subsidy. Unlike JPI in the instant case, which assumed neither the liabilities for the subsidy, nor the assets of the plan to pay for it, the successor employer in *Gillis* had assumed both and, therefore, had become the "plan sponsor." As the Eighth Circuit concluded, any apparent conflict between the outcomes of the two cases issues from the factual dissimilarities in their respective postures.

The Plan Participants also contend that this case presents important issues of statutory construction. However, the issues presented by this case are readily resolved based on the plain language of the statute itself, as well as the plain language of the plan document that underlies the dispute. The Eighth Circuit properly looked to these sources in rendering its decision, found no ambiguity and, accordingly, affirmed the grant of summary judgment in favor of Respondents.

The petition, therefore, presents no basis for granting a writ of certiorari and should be denied.

ARGUMENT

I. THE PLAIN LANGUAGE OF ERISA AND THE PENSION PLAN DEMONSTRATE THAT THE EARLY RETIREMENT SUBSIDY AT ISSUE IS NOT PROTECTED BY THE ANTI-CUTBACK RULE.

As the caption of the rule plainly states, the anti-cutback provision of ERISA governs a "decrease of accrued benefits through amendment of [a] plan." 29 U.S.C.A. § 1054(g)(1) (Supp. 1993). In pertinent part, the rule states that the "accrued benefit of a participant under a plan may not be decreased by an amendment of the plan." The rule further explains that "eliminating or reducing . . . a retirement-type subsidy . . . with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits." *Id.* § 1054(g)(2)(A). Regarding a retirement-type subsidy, however, the rule imposes a limitation upon the extent to which it will be protected: "In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy." *Id.* § 1054(g)(2).

The text of the anti-cutback rule clearly establishes that it applies to a retirement-type subsidy only if two prerequisites are met. First, the plan must have been *amended to decrease an accrued benefit*. Here, the Clevite Plan was not amended to decrease the early retirement subsidy at issue. Second, the plan participants must have *satisfied the preamendment conditions for the subsidy*. The Clevite Plan imposed age and service requirements, both of which had to be met while the participant was in the employ of Clevite. The Plan Participants never met those conditions and can never meet them because they ceased to be employed by

Clevite and became employed by JPI once the Engine Parts Division was sold to JPI. Thus, as the Eighth Circuit concluded, the subsidy fails to meet either prerequisite for protection under the anti-cutback rule.

In the absence of a plan amendment which reduces or eliminates an early retirement subsidy, the anti-cutback rule does not apply. *Adams v. LTV Steel Mining Co.*, 936 F.2d 368, 370-71 (8th Cir. 1991), *cert. denied*, ___ U.S. ___ , 112 S. Ct. 968 (1992); *Oster v. Barco of California Employees' Retirement Plan*, 869 F.2d 1215, 1220-21 (9th Cir. 1988); *Stewart v. National Shopmen Pension Fund*, 730 F.2d 1552, 1561 (D.C. Cir.), *cert. denied*, 469 U.S. 834 (1984). Nor does the mere operation of the plan language which has the effect of reducing a subsidy, absent any amendment thereto, trigger the anti-cutback rule. *Adams*, 936 F.2d at 370; *Oster*, 869 F.2d at 1221; *Hlinka v. Bethlehem Steel Corp.*, 863 F.2d 279, 284-85 n.10 (3d Cir. 1988); *Ross v. Pension Plan for Hourly Employees of SKF Industries, Inc.*, C.A. No. C862325-A, slip op. (N.D. Ohio 1987), *aff'd*, 847 F.2d 329, 332 & n.2 (6th Cir. 1988); *Dooley v. American Airlines, Inc.*, 797 F.2d 1447, 1452 (7th Cir. 1986), *cert. denied*, 479 U.S. 1032 (1987).

The Plan Participants contend that the Third Amendment to the Clevite Plan constitutes a plan amendment that reduced or eliminated the subsidy. Their contention, however, is contrary to the language of the Amendment itself. The Third Amendment states that, with respect to Clevite employees who were hired by JPI, service for JPI would be counted only toward a deferred vested benefit. The Amendment further states that "[e]mployment with JPI would not be taken into account for purposes of determining Benefit Service or . . . for any other purposes under the Plan." (Petitioners' Appendix, at A108-A109) The Third Amendment, therefore, granted the Plan Participants the right to continue to earn service credit for purposes of the deferred vested benefit, a right they otherwise would not have had under the terms of the Clevite Plan. Moreover, with respect to

all other benefits under the Plan, including the early retirement subsidy, the Amendment merely re-stated that which the Plan already provided, *i.e.*, that service with JPI would not be counted for the subsidy or for any other benefit. In essence, the Third Amendment conferred, rather than reduced or eliminated, a benefit under the Plan.[4] Thus, as the Eighth Circuit found, the Third Amendment did not constitute a plan amendment with respect to the subsidy to which the anti-cutback rule applies. (Petitioners' Appendix, at A6-A7)

The Eighth Circuit also concluded that the anti-cutback rule did not protect the subsidy because the Plan Participants had failed to meet the preconditions for the subsidy, *i.e.*, the service and age requirements while employed by Clevite. (Petitioners' Appendix, at A6-A7)

The anti-cutback rule provides unequivocally that a retirement-type subsidy will be protected *only* if the participants meet the eligibility conditions for the subsidy. 29 U.S.C.A. § 1054(g)(2) (Supp. 1993). This limitation on the scope of the protection of the rule includes age and service eligibility preconditions. *Harms v. Cavenham Forest Indus., Inc.*, 984 F.2d 686, 692 (5th Cir.), *cert. denied*, ____ U.S. ____, 114 S. Ct. 382 (1993); *Adams*, 936 F.2d at 371; *Ashenbaugh v. Crucible Inc., 1975 Salaried Retirement Plan*, 854 F.2d 1516, 1528 n.12 (3d Cir. 1988). *cert. denied*, 490 U.S. 1105 (1989); *Berard v. Royal Elec., Inc.*, 795 F. Supp. 519,

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4. The Plan Participants assert, with no support from or citation to the record, that the Purchase Agreement between Clevite and JPI provided that they would continue to receive the same benefits and would continue to accrue credit toward the Clevite Plan for time worked at JPI and that Respondents chose to ignore the Agreement and amend the Plan to reduce those benefits. (Petition, at 17) As set forth above, contrary to this assertion, the Purchase Agreement provided that JPI assumed no liability or obligation with respect to the early retirement subsidy and that there was to be no transfer of assets from Clevite or its Plan to JPI. Nor did the Agreement expand in any way the accrual of benefit service under the Clevite Plan, which at all times was governed by the terms of the Plan. (Petitioners' Appendix, at A126-A127, A164)

527 (D.R.I. 1992); *Lear Siegler Aerospace Products Holding Corp. v. Smiths Industries, Inc.*, C.A. No. 88 Civ. 1528 (JMC), 1990 U.S. Dist. LEXIS 2887, at *7 (S.D.N.Y. Mar. 16, 1990).[5]

Here, the Plan Participants had not met the age and service conditions for the early retirement subsidy while employed by Clevite, as required by the plain terms of the Clevite Plan. When their employment with Clevite ceased upon the sale of the Engine Parts Division, they no longer could meet the conditions. Thus, as the Eighth Circuit held, the subsidy was not protected by the anti-cutback rule. (Petitioners' Appendix, at A6-A7)

The Plan Participants contend that neither the clear terms of the anti-cutback rule, nor the plain language of the plan document, should govern the outcome of this dispute. They assert, rather, that the legislative history and various provisions of the Internal Revenue Code – though inconsistent with the statutory anti-cutback provision and the Plan document – are controlling. Their contention, however, violates fundamental canons of statutory construction that judicial inquiry shall end with the unambiguous terms of the statute. *Burlington Northern R.R. Co. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987); *North Dakota v. United States*, 460 U.S. 300, 312 (1983).

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5. As discussed below, decisions holding that the anti-cutback rule will protect a retirement-type subsidy in the context of a corporate transfer, despite the participants' failure to meet the age and service eligibility conditions for the subsidy, entail the transfer *both* of the participants' employment *and the plan* to the successor employer. Thus, in such cases, the successor employer became the plan sponsor of the subsidy, and the participants, in fact, could meet the conditions for the subsidy while employed by the sponsor. *Gillis*, 4 F.3d at 1147; *Adams v. Ford Motor Co.*, C.A. 92-CV-71403-DT, 1994 U.S. Dist. LEXIS 4288, at *64 (E.D. Mich. Mar. 31, 1994). *But see Hollingshead v. Burford Equipment Co.*, 809 F. Supp. 906, 916-18 (M.D. Ala. 1992) (opinion does not discuss nature of corporate transaction relating to pension obligations pursuant to informal pension program with no written plan document).

The Internal Revenue Code provisions relied upon by the Plan Participants relate to distributions and withdrawals from qualified pension plans and favorable tax treatment afforded lump sum distributions from qualified plans, *e.g.*, 26 U.S.C.A. §§ 401(a)(14), 402(e)(4)(A) (1988 & Supp. 1993). In addition to their obvious lack of bearing on the issues presented by this case, the "separation from service" principle that the Plan Participants assert should be imported into the anti-cutback rule appears in the Code itself.[6] The anti-cutback rule, on the other hand, contains no such rule, and the plain language of the rule requiring satisfaction of the preconditions for a subsidy would be negated by the injection of such a principle.

Moreover, adopting the Plan Participants' position would abrogate the Plan terms that establish the age and service conditions for the subsidy. Congress, in amending ERISA by the Retirement Equity Act of 1984, did not intend to undermine the fundamental principles of ERISA, which dictate that the terms of the plan shall prevail in determining participants' benefits entitlement.

The Plan Participants' effort to characterize the Eighth Circuit's ruling that the anti-cutback rule does not protect the subsidy as one of "judicial legislation" is insupportable. The Eighth Circuit properly employed a straight-forward analysis that began and ended with the clear and unambiguous language of the anti-cutback rule itself, rather than engaging in an interpretation of the statutory language based on the legislative history and unrelated provisions of the Internal Revenue Code, as urged by Plan Participants.

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6. The "separation from service" principle, cited by the Plan Participants, refers to the practice under the Internal Revenue Code of treating employees transferred to a successor employer as continuing to work for the same employer for the purpose of limiting the availability of favorable income tax consequences on lump sum distributions.

The rule plainly provides that a subsidy will not be protected unless a plan amendment reduces or eliminates the subsidy and the plan participants can meet the conditions for the subsidy. Looking to the equally clear and unambiguous language of the pension plan document, the Eighth Circuit correctly concluded both that no such plan amendment had occurred and that the Plan Participants' had not met the age and service preconditions for the subsidy in the employ of Clevite, and, as employees of JPI, could not meet the preconditions. Accordingly, the Eighth Circuit held that the subsidy fell outside the scope of the anti-cutback rule's protection.

II. THE THIRD CIRCUIT'S DECISION IN *GILLIS* PRESENTS NO CONFLICT WITH THE EIGHTH CIRCUIT'S DECISION, BECAUSE, IN *GILLIS*, UNLIKE THE INSTANT CASE, THE SUCCESSOR EMPLOYER HAD BECOME THE PLAN SPONSOR OF THE EARLY RETIREMENT SUBSIDY.

The issue addressed by the Third Circuit in *Gillis* was whether the predecessor employer (the seller) had transferred sufficient assets to the successor employer (the buyer) to fund the pension obligation assumed by the successor employer to provide the early retirement subsidy to plan participants who became employed by the successor. Under these circumstances, the successor employer had become the sponsor of the plan, and the Third Circuit applied the anti-cutback rule to protect the subsidy, holding that the participants could meet the age and service conditions for the subsidy in the employ of the new sponsor. *Gillis*, 4 F.3d at 1143, 1147; *see also Gillis v. Hoechst Celanese Corp.*, 818 F. Supp. 805, 810 (E.D. Pa. 1992) (district court opinion) (pursuant to purchase agreement, successor's pension plan provided

that transferred employees are entitled to same early retirement benefit as provided under predecessor's plan).

Here, in contrast, the Clevite Plan was not transferred to JPI in connection with the asset sale. Pursuant to the terms of the Purchase Agreement between Clevite and JPI, the Plan remained at all times with Clevite. JPI assumed none of the liabilities under the Plan, and none of the assets of the Plan were transferred to JPI. (Petitioners' Appendix, at A126-A127, A164) Thus, JPI never became the plan sponsor of the early retirement subsidy. Under these circumstances, the Eighth Circuit properly distinguished *Gillis* and found its rationale inapplicable to the instant facts:

> The sale [in *Gillis*] of the division by Hoechst to American Mirrex was made pursuant to an agreement that American Mirrex would provide substantially the same employee benefits as those Hoechst had provided. Thus, the employee/plaintiffs were subsequently employed by the plan sponsor that had assumed both the obligations and assets of the retirement plan.
>
> In contrast, the transfer of the Engine Parts Division from Clevite to JPI in the instant case entailed no such agreements. JPI, the successor employer, assumed neither the obligations, nor the assets of the Plan. Instead, Clevite later sold the Plan to a third party, The Pullman Company. Thus, unlike the former Hoechst employees, the former Clevite employees ceased all employment with the sponsor of the Plan.

(Petitioners' Appendix, at A8-A9)

In their Petition, the Plan Participants readily acknowledge that Hoechst Celanese, the seller in *Gillis*, was required to transfer funds to American Mirrex, the successor employer, to fund its liability for the early retirement subsidy. (Petition, at 12) Yet, inexplicably,

they assert that the facts of *Gillis* are "indistinguishable" from the facts of the instant case. Their assertion is contrary to the facts in *Gillis*, as well as the record evidence in the instant case.[7]

For these same reasons, the decisions of the Third and Eighth Circuit, contrary to the Plan Participants' assertion, will not result in confusion in the context of asset transfers or similar corporate transactions. The Third Circuit decision stands for the proposition that when, as part of a corporate transaction, the liabilities and assets for a retirement-type subsidy are transferred to the successor employer, the subsidy may not be reduced or eliminated. This conclusion is entirely consistent with the language of the anti-cutback rule because the transferred employees will continue to work for the plan sponsor.

On the other hand, when employees cease to be employed by the plan sponsor and commence employment with a successor employer as part of a corporate transaction involving no transfer of assets and no transfer of liabilities for a retirement-type subsidy, the anti-cutback rule will not apply with respect to those employees who have not met the plan's conditions for the subsidy. Like JPI in the instant case, the successor

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7. The Plan Participants' contention that a provision of the Purchase Agreement between JPI and Clevite, taken out of context, under which JPI agreed to establish a pension plan to provide the former Clevite employees with substantially similar benefits to those under the Clevite Plan, does not support their assertion. This provision, did not operate to transfer any liability to JPI under the Clevite Plan. Rather, its effect was to ensure that, as employees of JPI, the former Clevite employees would participate in a *new* plan with *new* liabilities that were solely those of JPI, unrelated to any continuing liability or obligation under the Clevite Plan, which remained the sole responsibility of Clevite. (Respondents' Appendix, at 8a) Accordingly, the same provision of the Purchase Agreement provided that JPI "is expressly not assuming any responsibility or liability for the administration of, contributions to, continuation of or distributions from" the Clevite Plan. (Petitioners' Appendix, at A164)

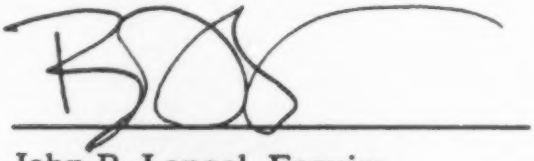
employer has not assumed the role of plan sponsor. This result is consistent not only with the plain language of the anti-cutback rule, but also with the well established principles underlying ERISA that the terms of the plan govern participants' entitlement to benefits.

Thus, contrary to the Plan Participants' assertion, these two decisions provide clear guidance for corporations in structuring such transactions and in fulfilling their obligations to plan participants following the transactions. When viewed in their proper light, the Plan Participant's "doomsday scenario" of mass confusion in corporate transactions does not exist.

CONCLUSION

WHEREFORE, Respondents request that the Court deny the Petition for Writ of Certiorari in this matter.

Respectfully submitted,



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Counsel for Respondents

Dated: May 26, 1994

INDEX TO RESPONDENTS' APPENDIX

1. Stipulation and Order of The Honorable Paul A. Magnuson, United States District Court for the District of Minnesota (March 13, 1992) . . 1a

2. Stipulation and Order of The Honorable Paul A. Magnuson, United States District Court for the District of Minnesota (June 1, 1992) 4a

3. Agreement between Local Lodge No. 650 of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO and JPI Acquisition, Inc. 7a

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Glenn E. Johnson, Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Case No.:
3-91-Civil-471

AB, CD, EF and GH, whose true and correct names are unknown, Plan Administrators, Fiduciaries, Named Fiduciaries, Committee Members and Trustees of the Clevite Industries Inc. Hourly Retirement Plan, Clevite Industries Inc. Hourly Retirement Plan, The Pullman Company, and Clevite Industries, Inc.,

Defendants.

ORDER

AND NOW, this 13th day of March 1992, upon consideration of the parties' Stipulation for Entry of Summary Judgment in Favor of Defendants on Counts II through VIII of the Complaint, it is hereby ORDERED that, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, Counts II through VIII of the Complaint are dismissed with prejudice.

Paul A. Magnuson
United States District Judge

FILED MARCH 13 1992
FRANCIS E. DOSAL, CLERK
JUDGMENT ENTERED_____
DEPUTY CLERK'S INITIALS_____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

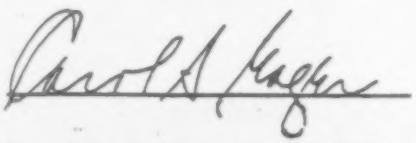
Glenn E. Johnson, Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl, on behalf of themselves and others similarly situated, Plaintiffs,	:	
v.	:	
AB, CD, EF and GH, whose true and correct names are unknown, Plan Administrators, Fiduciaries, Named Fiduciaries, Committee Members and Trustees of the Clevite Industries Inc. Hourly Retirement Plan, Clevite Industries Inc. Hourly Retirement Plan, The Pullman Company, and Clevite Industries, Inc., Defendants.	:	Case No.: 3-91-Civil-471

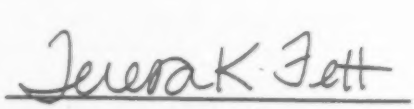
STIPULATION FOR ENTRY OF SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS ON COUNTS II THROUGH VIII OF COMPLAINT

After consideration of discovery documents and the arguments set forth in defendants' Motion to Dismiss or For Summary Judgment on Counts II through VIII of the Complaint and accompanying Memorandum of Law and Affidavits, plaintiffs do not contest the entitlements of defendants to the entry of summary judgment in favor of defendants. Plaintiffs will proceed with the remaining portion of the Complaint on behalf of the four individuals named in the Complaint and will not pursue class certification.

The parties, therefore, stipulate that the attached Order correctly sets forth the agreement between them. The parties further stipulate that the remaining portion of the Complaint (Count I) will proceed to be resolved on motion(s) for summary judgment.

Accordingly, the parties respectfully request that the Court enter the attached Order.





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ATTORNEYS FOR PLAINTIFFS

Dated: 3/10/92

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Glenn E. Johnson, Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AB, CD, EF and GH whose true and correct names are unknown, Plan Administrators, Fiduciaries, Named Fiduciaries, Committee Members and Trustees of the Clevite Industries Inc. Hourly Retirement Plan, Clevite Industries Inc. Hourly Retirement Plan, The Pullman Company, and Clevite Industries, Inc.

Defendants.

Case No.:
3-91-Civil-471

ORDER

AND NOW, this 1st day of June, 1992, upon consideration of the parties' Stipulation for Dismissal of Glenn E. Johnson as a Plaintiff, it is hereby ORDERED that, Plaintiff Glenn E. Johnson is dismissed with prejudice.

FILED JUNE 2, 1992
FRANCIS E. DOSAL, CLERK
JUDGMENT ENTERED_____
DEPUTY CLERK'S INITIALS_____

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Glenn E. Johnson, Richard H. Hunger, Lloyd L. Betcher and Lawrence F. Possehl, on behalf of themselves and all others similarly situated,

Plaintiffs,

Case No.:
Civil 3-91-471

v.

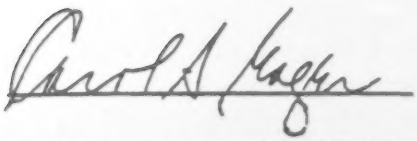
AB, CD, EF and GH, whose true and correct names are unknown, Plan Administrators, Fiduciaries, Named Fiduciaries, Committee Members and Trustees of the Clevite Industries Inc. Hourly Retirement Plan, Clevite Industries Inc. Hourly Retirement Plan, The Pullman Company, and Clevite Industries, Inc.

Defendants.

STIPULATION FOR DISMISSAL OF PLAINTIFF GLENN E. JOHNSON

Plaintiffs and Defendants hereby stipulate that Plaintiff Glenn E. Johnson will be dismissed, with prejudice, as a plaintiff in this case.

Accordingly, the parties respectfully request that the Court enter the attached Order.



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3300 Piper Jaffray Tower
222 Ninth Street South
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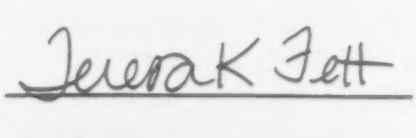
(612) 333-4800

ATTORNEYS FOR DEFENDANTS

Dated: May 21, 1992



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ATTORNEYS FOR PLAINTIFFS

Dated: May 27, 1992

AGREEMENT

WHEREAS, on February 17, 1987, JPI Acquisition, Inc., a subsidiary of J.P. Industries, Inc. ("JPI"), purchased the assets of the Engine Parts Division ("EPD") of Clevite Industries, Inc. ("Clevite"); and

WHEREAS, on February 17, 1987, JPI offered employment to all active EPD employees at the Lake City, Minnesota plant; and

WHEREAS, the majority of EPD employees at the Lake City, Minnesota plant accepted JPI's offer of employment; and

WHEREAS, the employees of the Lake City plant were represented by the Local Lodge No. 650 of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO (the "Union"); and

WHEREAS, JPI and the Union now wish to enter into a Collective Bargaining Agreement setting force terms and conditions of employment for employees of JPI at its Lake City plant;

NOW, THEREFORE, JPI and the Union agree to execute a collective bargaining agreement and agree to terms and conditions of employment which are the same as set forth in the Collective Bargaining Agreement executed between Clevite and the Union and (which shall similarly expire on October 2, 1987), only under the following condition:

1. Except for settlements of outstanding grievances, JPI does not agree and specifically does not adopt or assume any liabilities, debts, or obligations occuring as a result of or arising out of any of the terms, conditions, or benefits, of the Collective Bargaining Agreement between Clevite and the Union prior to February 17 1987.

2. JPI agrees to provide health insurance and hospitalization insurance to all active employees of the Lake City plant at the same level of benefits that they had been receiving prior to February 17, 1987.

3. JPI agrees to establish a new pension plan for all active hourly employees which will provide benefits using the same monthly multiplier which was in effect under Clevite's previous pension plan for the Lake City employees. Under JPI's plan, an hourly employee's past service with Clevite will be given credit only for vesting purposes but not for benefit accrual purposes.

4. This Agreement will expire on October 2, 1987, under the terms and conditions set forth herein.

NOW, THEREFORE, the parties execute this Agreement of the 10th day of March, 1987.

JPI ACQUISITION, INC. A SUBSIDIARY OF J.P. INDUSTRIES, INC.	LOCAL LODGE NO. 650 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS, AND HELPERS AFL-CIO.
David D. Tytton 3-10-87	
Thomas A. Dennis	Bill Dais
	Peter A. Pistorius
	John Lyle
	George Christensen
	Arthur J. Sturneman
	Harold A. Lofgren